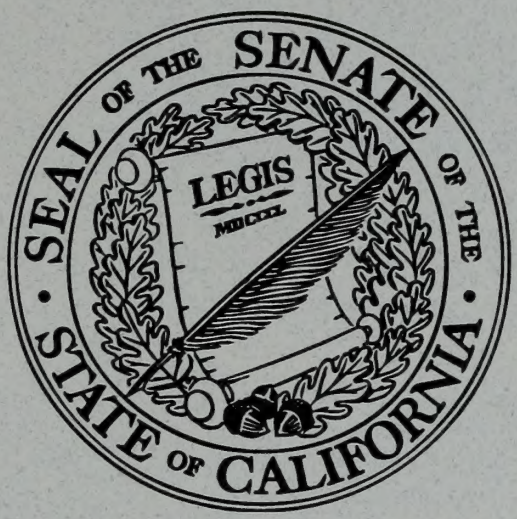
HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA



STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA

MONDAY, JULY 2, 2001
1:45 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITAL

SACRAMENTO, CALIFORNIA

MONDAY, JULY 2, 2001

1:45 P.M.

Reported by:

Michael J. Mac Iver,

Shorthand Reporter

PETERS SHORTHAND REPORTING CORPORATION
3336 BRADSHAW ROAD, SUITE 240, SACRAMENTO, CA 95827 / (916) 362-2345

APPEARANCES

MEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

ROY MABERY

California Association of Black Correctional Workers

RICHARD L. TATUM

California Correctional Supervisors Organization

CORBETT WILLIAMSON

California Correctional Supervisors Organization

APPEARANCES

HEARING PANEL

SENATOR JOHN BURTON, Chair

SENATOR ROSE JORDSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM MAROUT

SENATOR GLORIA ROMERO

STAFF PRESENT

CHRIS BOLTUCK, Executive Officer

PAT HERA, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SMALT, Consultant to SENATOR JORDSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR ROMERO

RYAN SERLMAN, Consultant to SENATOR AGNEWS

ALSO PRESENT

ROY MAZEAT

California Association of Black Correctional Workers

RICHARD L. TATUM

California Correctional Supervisors Organization

CORBETT WILLIAMSON

California Correctional Supervisors Organization

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--ooOoo--

CHAIRMAN BURTON: Governor's appointees appearing today. Mr. Huskey.

MR. HUSKEY: Yes, sir.

CHAIRMAN BURTON: We have your statement for the record, and if you'd just like to make some brief comments.

MR. HUSKEY: Yes. My career at the Department of Corrections and the State started about 41 years ago with the Department of Mental Hygiene and the Youth Authority for about three years. I joined the Department of Corrections on the opening of Susanville in 1963. There I worked my way up through the ranks from officer to Chief Deputy Warden. I made warden of Avenal State Prison in 1989. I retired in 1993. I worked as a retired annuitant at three different institutions since then, and I was reappointed November of last year.

CHAIRMAN BURTON: Now, you were a retired annuitant, now you're moving back in to full-time employment?

MR. HUSKEY: That's correct, sir.

CHAIRMAN BURTON: Questions from the Committee? Senator Johnson?

SENATOR JOHNSON: No, questions.

CHAIRMAN BURTON: Senator Romero?

1 SENATOR ROMERO: Yes, thank you. Let me just ask
2 at the prison do you feel every position, every staff
3 position that's authorized by the Legislature, in the event
4 that you do not, what do you do with those monies that are
5 earmarked by the Legislature?
6 MR. HUSKEY: There is a required salary savings
7 level on each of the institutions and those positions are
8 vacant -- are filled back. In those few cases where we
9 don't have the position filled because we're a rural area,
10 we're in the process of filling them.
11 CHAIRMAN BURTON: I see where you've revised your
12 shooting policy. What was it and what is it?
13 MR. HUSKEY: Oh, the shooting policy was
14 redesigned significantly while I was off. When we came
15 back, we have removed the lethal firearms from most of the
16 posts and are dealing with less-than-lethal implements
17 within the institution. We've gone through the use-of-force
18 training for all of our staff to show that they were trained
19 in the new policy and procedures. I've just finished up the
20 second round in that just last month.
21 CHAIRMAN BURTON: What's the issue with the
22 proposed generating plant near the prison, and what's that
23 going to do to your water availability?
24 MR. HUSKEY: At this point we anticipate no impact
25 on us. I've met with the mayor of the city, he's attempting

1 to gain additional water rights from the local farmers to
2 supply that agency, Duke Electric, and he's made no requests
3 from us for changes.
4 CHAIRMAN BURTON: So I'm missing something. So it
5 won't be a problem, will be a problem, it's not a problem
6 now but it could be a problem in the future?
7 MR. HUSKEY: There's no indication of a problem at
8 this point in time, no, sir.
9 CHAIRMAN BURTON: And has anybody put up a warning
10 flag for you?
11 MR. HUSKEY: No, sir, not that I know of.
12 CHAIRMAN BURTON: Okay. Senator Knight?
13 SENATOR KNIGHT: No questions.
14 CHAIRMAN BURTON: Senator Karnette?
15 SENATOR KARNETTE: I know that health care is a
16 consideration you do pretty well with and you do better than
17 some cases. What do you think we need to do about that, the
18 health care situation, because I know a lot of times inmates
19 don't get the care they really need?
20 MR. HUSKEY: Well --
21 SENATOR KARNETTE: Maybe they get emergency, but
22 I'm talking about regular health care, I know there's a
23 problem.
24 MR. HUSKEY: The problem is we are getting a
25 sicker population to start with in all of the institutions,

because the population is getting older among other things. But I don't think the Department of Corrections' ability to get the inmates to their doctors and for specialists is much beyond what most of us get in our HMO's.

SENATOR KARNETTE: You say it's better there than or just as good? Well, I don't know, I just get concerned about that because I know there's difficulty getting people to work in it.

MR. HUSKEY: Yes, there is. In our rural area it has caused some problems. I've been fortunate, I have a health care manager that's outstanding in recruitment, and when we look, from the vacancy plan, we're really in pretty good shape.

SENATOR KARNETTE: Okay, thank you.

SENATOR JOHNSON: Mr. Chairman?

CHAIRMAN BURTON: Yes, Senator Johnson.

SENATOR JOHNSON: I'd just like to follow up on your lead, sir, to Senator Romero's question earlier about the 5 percent salary savings. What exactly is the source of those instructions, is it coming from headquarters in Corrections, is it coming from the Department of Finance, is it coming from the Governor, where is this idea coming from about the 5 percent salary budget?

MR. HUSKEY: I believe it's coming from the Department of Finance, sir, and I believe -- I didn't

mention 5, I believe it's 4.9, if I'm not mistaken at this time.

CHAIRMAN BURTON: A very precise number. Jerry, where is the 4.9 coming from?

SENATOR JOHNSON: Were the Department of Finance as precise when they come before the Legislature with a budget that asks for a given number of positions. I think there's a real issue here, not with this nominee, but a real issue about truth in budgeting. If they come before the Legislature and say we need this, if they don't really think they need this, then why don't they tell us what they really want to spend the money for? That's not your problem and I'm not directing it at you, but your answer certainly leads to a lot more questions.

CHAIRMAN BURTON: Are we talking salary savings?

SENATOR JOHNSON: Right.

CHAIRMAN BURTON: Well, we've given salary savings as long as I've been raising a voice, not that I have ever quite understood it, but they always give people 100 bucks and expect them to only spend 95.

SENATOR JOHNSON: It's like three card monte or the bead in the shell. Don't play that game because you'll wind up losing.

SENATOR BURTON: Witnesses in support. Go ahead.

MR. MAPERY: Go afternoon, Senator Burton,

1 Chairman Burton, and the Rules Committee members. My name
2 is Roy Mapery, I'm the state president of the Association of
3 Black Correctional Workers. I'm here today to give support
4 for both candidates, for the sake of time, and Senator
5 Burton I want you to know we missed you during the last
6 hearing, but Senator Johnson did a fine job.
7 CHAIRMAN BURTON: You're not term limited in that
8 job, are you?
9 (Laughter.)
10 MR. MAPERY: We're not. Thank you.
11 CHAIRMAN BURTON: Thank you.
12 SENATOR KARNETTE: Senator Burton, while he's
13 coming up I forgot a question that I had.
14 We had a hearing last week about immigrants applying for
15 release to their home country and I forgot to ask about
16 that. I'm just wondering how many -- are there immigrants,
17 prisoners who want to go -- how many people apply to go back
18 to their home country?
19 MR. HUSKEY: Well, there's a process which through
20 the Foreign Prisoner Transfer Treaty --
21 SENATOR KARNETTE: Transfer, yes.
22 MR. HUSKEY: But it's initiated when they come
23 into the institution, they are given an opportunity, the
24 program's explained to them. They fill out a form if
25 they're interested in it. When they get to the receiving

1 institution, the additional forms and the evaluation is done
2 and sent to the Board of Prisons and Probation. I think the
3 numbers are pretty small, because most of those I talked to
4 through the years really are not interested in going back to
5 their home country.
6 CHAIRMAN BURTON: Who has the final determination?
7 MR. HUSKEY: Their nation does, but it's referred
8 through the Board of Prison Terms.
9 CHAIRMAN BURTON: Well, I know the situation of a
10 Swedish citizen who they are more than happy to take her
11 back and have her serve whatever time she served here, and
12 it's not working and I don't know who calls the final shot.
13 I mean the warden, the director, Presley, the Governor,
14 whom?
15 MR. HUSKEY: The Board of Prison Terms, sir.
16 CHAIRMAN BURTON: Not the Governor?
17 MR. HUSKEY: No. Well, the Board of Prison Terms
18 is appointed by the Governor, I don't know if he's involved
19 with it or not, I can't say that. The responsibility is on
20 the Board of Prison Terms.
21 CHAIRMAN BURTON: Michael, what?
22 MR. O'NEIL: That's correct.
23 CHAIRMAN BURTON: What is correct.
24 MR. O'NEIL: The Board of Prison Terms reviews the
25 request, sends them to the United States Department of

1 Justice, and if they're returned, then the Board of Prison
2 Terms is the final arbiter and --
3 CHAIRMAN BURTON: Are you familiar with the case
4 I'm talking about?
5 MR. O'NEIL: No, sir.
6 CHAIRMAN BURTON: We'll make you familiar with it.
7 Okay.
8 SENATOR KARNETTE: Also, Senator Burton, there
9 were some concerns about whether or not people were
10 encouraged to actually apply. I got the feeling that they
11 would just say, well, you're not going to get it anyway and
12 they didn't even apply in some prisons. So are they
13 encouraged to apply?
14 MR. HUSKEY: They are not only polled on when they
15 initially come in, but they're asked again if they'd like to
16 go at each annual classification and that's documented.
17 SENATOR KARNETTE: But the Board of Prison Terms,
18 they only get a few, that was very surprising.
19 MR. HUSKEY: My experience has been that most of
20 the inmates we talked to were not interested in going back
21 to their country to serve their time.
22 SENATOR BURTON: The only two I heard of were,
23 didn't get a chance to do it. Witnesses in opposition --
24 oh, I'm sorry, sir, you're up next. We lost you.
25 MR. TATUM: Good afternoon, Mr. Burton and Members

1 of the Committee. I'm Richard Tatum, I'm the state
2 President of the California Correctional Supervisors
3 Organization. I'm here today to support Mr. Huskey. I
4 think that his vast experience with the California
5 Department of Corrections, his open-door policies with his
6 supervisors and employees, has pretty well spoken for itself
7 over the years. Basically, we like to see him and he's the
8 type of guy that we need within the Department of
9 Corrections. That's all I have. Thank you.
10 CHAIRMAN BURTON: Witnesses in opposition. If
11 not, move by Senator Johnson?
12 SENATOR JOHNSON: So moved.
13 CHAIRMAN BURTON: Call the role.
14 MS. WEBB: Senator Karnette?
15 SENATOR KARNETTE: Aye.
16 MS. WEBB: Karnette Aye. Senator Knight?
17 SENATOR KNIGHT: Aye.
18 MS. WEBB: Knight Aye. Senator Romero?
19 SENATOR ROMERO: Aye.
20 MS. WEBB: Romero Aye. Senator Johnson?
21 SENATOR JOHNSON: Aye.
22 MS. WEBB: Johnson Aye. Senator Burton?
23 SENATOR BURTON: Congratulations, sir.
24 Mr. Mc Grath. We have your statement for the record, sir,
25 so if you could --

1 MR. MC GRATH: Yes, sir. Mr. Chairman and Members
2 of the Committee, I'd like to thank you for having me here
3 today to give you my credentials to be the warden at Pelican
4 State Prison. You've got a copy of my resume. I've been in
5 Corrections or in the correctional agency for over 22 years.
6 The first three and a half years with the California Youth
7 Authority, and the last 19 or so in the Department of
8 Corrections.
9 I have worked at all levels in the prison system,
10 from entry level up to my current position. I have been at
11 Pelican Bay State Prison since 1994. I went there as an
12 associate warden.
13 CHAIRMAN BURTON: You're aware of the fact that, I
14 guess, since yesterday over 600 inmates in the Security
15 Housing have refused like four meals. You know, I mean,
16 why?
17 MR. MC GRATH: Yes, Mr. Chairman, I am. I was
18 informed last evening that a group of inmates had not taken
19 their evening meal, and I was informed this morning -- and
20 that number was about 645. I was informed this morning that
21 there were 629 who did not take their breakfast meal. These
22 are inmates that are housed in the Security Housing Unit of
23 the prison. There are approximately 1,200 inmates in the
24 Security Housing Unit, and this is actually the prison
25 within the prison system. These 1,200 beds house the

1 individuals who have committed crimes throughout --
2 CHAIRMAN BURTON: Right. But why are they
3 refusing food is the question?
4 MR. MC GRATH: Yes, yes. I was just trying to
5 give you a little background.
6 CHAIRMAN BURTON: Okay.
7 MR. MC GRATH: The reason they are refusing the
8 food, as I understand it -- now I only have two that I know
9 of that have made an official declaration that I'm on a
10 hunger strike and here's why. But my understanding is that
11 they are protesting the fact that we have the Security
12 Housing Unit and that we manage prison gangs with housing
13 them in the Security Housing Unit. This issue has been
14 challenged in court on a couple of occasions, and on each
15 occasion we have been successful in defending the program
16 that we have for this small group of California prisoners.
17 CHAIRMAN BURTON: Well, do you put them in the SHU
18 because they have done something, or do you put them in the
19 SHU because they're associated with people who did
20 something? In other words, if because they have an
21 association with a group of cons, as opposed to they've
22 misbehaved?
23 MR. MC GRATH: All of that is looked at, in terms
24 of getting a term in the Security Housing Unit, you can do
25 that for committing a specific crime.

1 CHAIRMAN BURTON: Yes.

2 MR. MC GRATH: You could also be placed there on
3 indeterminate status based on your validation as a member of
4 a prison gang which is known to be involved in criminal
5 conspiracies.

6 CHAIRMAN BURTON: So they could be there forever
7 and a day even if they didn't do anything except they were
8 associated with a group?

9 MR. MC GRATH: Well, there are ways out, and one
10 of the ways for them to get out is to debrief and
11 disassociate themselves from the gang.

12 CHAIRMAN BURTON: Maybe at the cost to their
13 physical safety or something?

14 MR. MC GRATH: There are issues with the factions
15 in prison and there are safety concerns with an individual
16 that's in a gang and decides to no longer be in a gang.
17 We've done pretty well in working with them and protecting
18 them.

19 But there is another way out, and the other way
20 out is we began this past year in reviewing all of the cases
21 that are in there on the determinate gang status, and we've
22 reviewed 450 plus individuals to determine not just are they
23 validated in a gang, but to determine are they involved in
24 gang activities, are they currently presenting a threat.

25 Those that have no documentation of gang activity

1 in the last six years are placed on inactive status and then
2 they are sent to a Departmental Review Board and they are
3 released. In the past 12 months we have released about 117
4 out of that population to general population based on their
5 inactive status.
6 So there are ways out, but we have to be sure that
7 they are not involved in those criminal activities before we
8 can safely put them --
9 CHAIRMAN BURTON: What's the magic of six as
10 against four or five?
11 MR. MC GRATH: Six was a number that the
12 Department came up with as a departmental program to
13 determine a period of time where we know they haven't been
14 involved in these criminal activities. That's the number
15 that was given to me, and that's the number that we have
16 used.
17 CHAIRMAN BURTON: So they basically, as with a lot
18 of these stupid things, plucked it out of the air? It could
19 have been six, it could have been seven, it could have been
20 five, it could have been four?
21 MR. MC GRATH: I think it probably could have been
22 whatever it was chosen to be, but it certainly needed to be
23 a significant amount of time because although we may not
24 have documentation, we need to be fairly certain that they
25 are not involving themselves in these activities because

1 people's lives are in the balance.

2 CHAIRMAN BURTON: So if somebody disassociates

3 themselves and moves out, has there ever been any violence

4 against them?

5 MR. MC GRATH: I'm certain somewhere along the way

6 there has been, but I think our track record has been very

7 good. We have a transitional housing unit, they come out,

8 they go through the program, they get placed in the

9 population with other individuals with like circumstances.

10 They are able to work and go to school and have a very

11 productive prison life. And we have not had an issue with a

12 lot of them being hurt.

13 CHAIRMAN BURTON: Senator Johnson?

14 SENATOR JOHNSON: No questions, Mr. Chairman.

15 CHAIRMAN BURTON: Senator Romero?

16 SENATOR ROMERO: Can you describe and tell me

17 about the Prison Industry Authority jobs that you have at

18 Pelican Bay?

19 MR. MC GRATH: Yes, Senator. We have presently

20 several Prison Industry programs. We have an optical lab

21 where we do -- we make eye glasses for Medi-Cal and for our

22 inmates and for state agencies. We have a laundry prison

23 industries program where we do laundry for the entire

24 facility. We have a dry cleaning program, and we have a

25 shoe factory where we make shoes for the inmates at our

1 prison, as well as throughout the system.
2 SENATOR ROMERO: And how many inmates are involved
3 in this?
4 MR. MC GRATH: When the programs are up and fully
5 running, I would say in the neighborhood of three to four
6 hundred, because we have different numbers in the different
7 programs. But in the shoe for example -- shoe factory, you
8 can have up to 75, 80 inmates, the same is true in the
9 optical and the laundry and any programs.
10 SENATOR ROMERO: Okay.
11 CHAIRMAN BURTON: Senator Karnette?
12 SENATOR KARNETTE: You have probably heard me ask
13 about the immigration, the immigration question. Do you
14 feel like that all of the inmates are given the opportunity
15 to apply to go back to their home country, are they
16 encouraged in Pelican Bay?
17 MR. MC GRATH: Yes, ma'am. When that program
18 first came out three or four years ago, we went through and
19 offered it to every single inmate formally on paper. The
20 problem that we have had at Pelican Bay, although we do --
21 we do renew this in front of them every year as Mr. Huskey
22 said in their annual classification, the problem we have is
23 that one of the exclusionary factors is if you are a life
24 prisoner without a parole date, you're immediately
25 ineligible, or if you were in the country five years prior

1 to your incarceration, you're ineligible. And when you look
2 at our population, which is about 50 percent life prisoners
3 without parole dates, off the top, half the prisoners at
4 Pelican Bay don't qualify for this program.
5 We still make it available to them, we ask them,
6 we do send their requests forward, but I have to agree that
7 we haven't had a lot of individuals that have been
8 interested in the program.
9 SENATOR KARNETTE: I also have another question
10 about education. If they have no idea when they'll get out,
11 does education still seem a good way to keep down violence?
12 MR. MC GRATH: I think education is vitally
13 important in prison. I believe the very tools that help to
14 make an individual successful on parole are the very same
15 tools that help us to manage them while they are
16 incarcerated. It's a self-esteem issue. It's feeling like
17 they can learn, that they have importance, they have value.
18 Education, I believe, does those things, and we
19 have continued to use education, even in the rocky times
20 that we've had at Pelican Bay, by getting innovative with
21 doing some cell-study programs, we're doing a GED express
22 program, we're even doing this with individuals in the
23 Security Housing Unit.
24 SENATOR KARNETTE: It gives them something to do
25 and something to think about?

1 MR. MC GRATH: Yes, Senator. And I believe it's a
2 valuable tool that we would be making a mistake not to use
3 in our prison.
4 CHAIRMAN BURTON: Senator Knight?
5 SENATOR KNIGHT: No questions.
6 CHAIRMAN BURTON: Witnesses in support, we had
7 them. Witnesses in -- in support or opposition, sir?
8 MR. WILLIAMSON: In support, sir.
9 CHAIRMAN BURTON: All right. Just move right up
10 here.
11 MR. WILLIAMSON: My name is Corbett W. Williamsom.
12 I'm a correctional lieutenant at Pelican Bay and the chapter
13 president for the Pelican Bay State Prison chapter of the
14 California Correctional Supervisors Organization. And we
15 wanted to --
16 CHAIRMAN BURTON: Do you guys support Senator
17 Brulte's bill?
18 MR. WILLIAMSON: Which number, sir?
19 CHAIRMAN BURTON: That could raise your pay.
20 MR. WILLIAMSON: I don't know, that's probably
21 been supported many times.
22 CHAIRMAN BURTON: It's on that subject of
23 collective bargain, right?
24 MR. WILLIAMSON: Yes, sir.
25 I, like a lot of the supervisors at Pelican Bay,

1 have been there since it opened in 1989 and many of us have
2 had the pleasure of working directly for Mr. Mc Grath prior
3 to his assuming the position of warden, and our supervisory
4 staff are pretty well unanimous in their praise of
5 Mr. Mc Grath's knowledge, management ability, and one of the
6 most important things are his people skills he possesses in
7 dealing with both the staff and the inmate.
8 As CCSO chapter president, I've had a lot of
9 opportunities to discuss issues of supervisory concern with
10 Mr. Mc Grath, and during these discussions Mr. Mc Grath has
11 always been open, honest, and willing to discuss and attempt
12 to resolve the issues the supervisors have working at the
13 prison. As an employee organization, there's not a lot more
14 that we can ask.
15 In closing, I'd just like to say that the most
16 telling point in Mr. Mc Grath's management of the difficult
17 and sometimes violent environment is reflected by the staff
18 employee here. The comments of the many official visitors
19 who pass through the institution are consistent when they
20 talk about the high morale and the professionalism in their
21 encounters with staff.
22 Although Mr. Mc Grath would say all the credit
23 belongs to these staff, in reality the high morale and
24 professionalism, I believe, are direct reflections of his
25 leadership. Thank you.

1 CHAIRMAN BURTON: I guess I should ask the warden
2 too, but you were supervising for your warden during the so
3 called scalding, hot-scrubbing incident that allegedly
4 happened at Pelican Bay?
5 MR. MC GRATH: No, Senator, I wasn't at Pelican
6 Bay when that happened. That occurred in about 1992.
7 CHAIRMAN BURTON: I thought it was before that.
8 It took that long to come to light?
9 MR. MC GRATH: That was brought out in the Madrid
10 versus Gomez case, class-action case. It went to trial in
11 1993 in the Northern District Court, and the decision was
12 rendered by Judge Henderson in January of '95. But the
13 event you're describing was --
14 CHAIRMAN BURTON: I thought it was later than that
15 for some reason. You were there then?
16 MR. WILLIAMSON: Yes, sir.
17 CHAIRMAN BURTON: Do you want to comment on that
18 at all?
19 MR. WILLIAMSON: On the thing with Von Dorch, I
20 don't have any personal first-hand knowledge of it because I
21 wasn't working in that area when it occurred. But the fact
22 that did it occur, I never saw any facts on it. But like I
23 say, I wasn't there personally.
24 CHAIRMAN BURTON: So stuff like that doesn't
25 happen anymore, Warden?

1 MR. MC GRATH: No, sir. It's not happened since
2 I've been there. I have been there since April of 1994, and
3 I believe I was the first piece of the new administration
4 that came in to take a look at all of those issues.
5 CHAIRMAN BURTON: And like with the guards and
6 that they as a result, because of the type of people they're
7 dealing with, the inmates, I mean do the new ones that come
8 in, the old ones get refresher courses on, I guess to use a
9 stupid phrase, sensitivity training or something?
10 MR. MC GRATH: I believe what really happens is
11 that the correctional professionals give you what you ask
12 for, and you need to set expectations, and my expectation is
13 professionalism, they're trained properly, and then they are
14 given the tools they need to do their job.
15 CHAIRMAN BURTON: Well, how about do you give them
16 stuff not to do?
17 MR. MC GRATH: Absolutely. Absolutely. Their
18 training talks about what force is, what appropriate force
19 is, and how it's to be conducted and how it's to be
20 reported. The bottom line is at Pelican Bay we're doing
21 business on top of the table, and I think our employees can
22 go home and feel good about what they've done and not worry
23 about hiding anything at this point in our evolution. I
24 think we've made great strides.
25 CHAIRMAN BURTON: Witnesses in opposition?

Move by Senator Johnson?

SENATOR JOHNSON: Yes, sir.

CHAIRMAN BURTON: Call the role.

MS. WEBB: Senator Karnette?

SENATOR KARNETTE: Aye.

MS. WEBB: Karnette Aye. Senator Knight?

SENATOR KNIGHT: Aye.

MS. WEBB: Senator Romero?

SENATOR ROMERO: Aye.

MS. WEBB: Romero Aye. Senator Johnson?

SENATOR JOHNSON: Aye.

MS. WEBB: Johnson Aye. Senator Burton?

CHAIRMAN BURTON: Aye. Congratulations, sir.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:25 p.m.)

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing Senate Rules Committee proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Senate Rules Committee proceedings, or in any way interested in the outcome of said Senate Rules Committee proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 22st day of July 2001.

Michael J. Mac Iver
Shorthand Reporter

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA

MONDAY, JULY 9, 2001
1:45 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

SACRAMENTO, CALIFORNIA

MONDAY, JULY 9, 2001

1:45 P.M.

Reported by:

Michael Mac Iver, Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

CHARLES REED, Chancellor

California State University

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1 P-R-O-C-E-E-D-I-N-G-S

2 --ooOoo--

3 CHAIRMAN BURTON: Today we have William Hauck,
4 Member of the Trustees of the California State University.
5 Go ahead.
6 MR. HAUCK: Thank you Senator Burton and Members of
7 the Committee. I'm pleased to be here today, and it's been
8 a privilege for me to serve on the Trustees for the last
9 eight years, and I hopefully am looking forward to serving
10 one more term.
11 I'm a product of the CSU system, I graduated from
12 San Jose State more years ago than I'd like to remember, and
13 I am very dedicated to the students in our system. I also
14 think that the CSU plays a critical role in California's
15 economy, and really it's an inspiration to go out on these
16 campuses and see the young people that are coming through
17 the system.
18 And just briefly, recently I was the commencement
19 speaker at Cal State LA, and one of the things I did in the
20 course of that was to ask every graduate who was the first
21 in his family or her family to stand up, and I would say
22 that almost half of the graduates that were seated on the
23 field that day stood up when I asked them to do that. And I
24 mean it is a real inspiration, you know, and very
25 gratifying, frankly, to see that, you know, we are educating

1 young people who are the first in their family to get a
2 college degree, that's certainly going to be good for them
3 personally and I think it's going to be very good for
4 California.
5 Senator, I think I would end my remarks at that
6 point and I'd be happy to entertain questions.
7 CHAIRMAN BURTON: Senator Johnson?
8 SENATOR JOHNSON: No questions.
9 CHAIRMAN BURTON: Senator Karnette?
10 SENATOR KARNETTE: No questions.
11 CHAIRMAN BURTON: Senator Romero?
12 SENATOR ROMERO: Thank you. I had a couple of
13 questions. Let me start first with the advancement of
14 students in the Cal State system. I was a former faculty
15 member in the Cal State system, Cal State LA specifically.
16 MR. HAUCK: All right.
17 SENATOR ROMERO: There's a concern, especially in
18 the graduate-level programs, that students are brought in to
19 the program, the masters'-level courses and then stay there,
20 with very little counseling opportunities, so that the rates
21 of graduation, termination at the masters' level. I'm
22 curious if you've had any discussion about this and what you
23 would do as a Trustee to look into this concern of opening
24 up the doors, admitting students in, taking their money, but
25 not having the courses or the support system to move

1 students out?

2 MR. HAUCK: Senator, I'm not aware of that as a

3 problem, but if that is, in fact, if what you say is true,

4 it would be -- certainly be a concern, and I will pursue

5 that with the chancellor and with his staff to determine

6 whether that's what's happening, and if it is, why. I think

7 we would address that.

8 SENATOR ROMERO: Okay. And again, it's

9 observational at this point, I spoke with the faculty on

10 different campuses. It would be something that I would hope

11 perhaps that the trustees could maybe begin to take a look

12 at this.

13 A second question, let me ask, is regarding

14 labor/management relations in the CSU. I think there have

15 been some difficulties in negotiation of contracts. I'd

16 like to ask what are your thoughts on the state of

17 labor/management relations, some of the causes, and your

18 view, in terms of looking at even when we go to the

19 bargaining table for openers, some of the past practices and

20 current practices of asking employees to give up basic due-

21 process rights in exchange for the possibility of a salary

22 increase. What are your views on those for openers and what

23 those negotiations should look like?

24 MR. HAUCK: Well, first I want to be clear that,

25 you know, what I say is outside the process, the collective

1 bargaining process, that we are currently in the middle of
2 with the California Faculty Association. So just in
3 general, from my standpoint our relationship with the
4 faculty and with the faculty union is the most important
5 issue that we are faced with at the moment that we need to
6 deal with. The faculty is responsible for training these
7 young people that we see when we go to the campuses and that
8 we see when we go to graduations like the Cal State LA
9 graduation.
10 So I think that the board and the chancellor's
11 office -- the chancellor needs to address every issue that
12 we have with the faculty across the board and hopefully, you
13 know, out of that process get to a point where we have not
14 only a good contract from the standpoint of the faculty and
15 as well from the standpoint of the State, but that we have
16 good relations with the faculty and that we don't get into
17 the kinds of cycles that we've been in where every three
18 years we seem to be in a contentious situation. So, I mean,
19 I can say to you that it's a very high priority for me and,
20 I think, for the board to deal with these issues.
21 SENATOR ROMERO: Thank you.
22 CHAIRMAN BURTON: Senator Knight?
23 SENATOR KNIGHT: No, thank you.
24 CHAIRMAN BURTON: Well, I'll ask one question.
25 All right. As you know we passed a very historic Cal Grant

1 program last session and yet the number of Cal Grant awards
2 seems to be down, as opposed to up, and what kind of steps
3 can the CSU Trustees take to, one, get the information out
4 both to college graduates who are applying and students that
5 are there now to make sure that, you know, students who are
6 eligible will take advantage of this?
7 MR. HAUCK: That's a good question, Senator.
8 CHAIRMAN BURTON: I thought it was.
9 MR. HAUCK: And that's why you asked it. I think
10 the answer, or at least a beginning of an answer to your
11 question is we need to require each of our presidents of the
12 23 schools to in their areas, in their so-called market
13 areas, to reach out to every high school and to the
14 counselors at every high school to make sure that they're
15 aware of the availability of the Cal Grant program, because,
16 obviously, it does no good to pass that measure and then not
17 utilize it to the extent that it needs to be. And we are
18 not doing that currently. So we are going to ask every one
19 of our presidents to be sure that they have personal and
20 direct contact with each high school in their area to make
21 the point that this Cal Grant availability is there.
22 CHAIRMAN BURTON: And also, I guess, on their own
23 campuses for the students that are there now that may not
24 have --
25 MR. HAUCK: Sure.

1 CHAIRMAN BURTON: -- been eligible?
2 MR. HAUCK: Sure.
3 CHAIRMAN BURTON: CSU, as I understand it, at one
4 time had some institutional aid programs for students?
5 MR. HAUCK: Institutional aid?
6 CHAIRMAN BURTON: I mean financial aid at each
7 institution? You're nodding your head.
8 MR. HAUCK: Yes, sir.
9 CHAIRMAN BURTON: I'm having trouble with this
10 because whoever gave us the question it made no sense
11 whatsoever. But assuming that you have the Cal Grant
12 program that makes almost everybody, you know, eligible,
13 what would maybe -- Chuck would know this one. What would
14 happen and how would you deal with the institutional
15 financial aid? Charles -- I mean, do you mind if we bring
16 up the man there? We're happy to have him come up here.
17 MR. REED: Senator, we are maintaining and also
18 increasing the institutional financial aid and --
19 CHAIRMAN BURTON: Now, who would get -- in other
20 words, in theory an individual could get that in addition to
21 Cal Grant, or if people somehow fall between a Cal Grant
22 would get that or what?
23 MR. REED: That is correct.
24 CHAIRMAN BURTON: That was an either/or. Either
25 one or both?

1 MR. REED: Both.

2 CHAIRMAN BURTON: Okay.

3 MR. REED: Senator, also, you know, in addition to
4 the board, we were very disappointed this summer to find
5 that the number of Cal Grants were not what we had
6 anticipated.

7 In addition to what Trustee Hauck said, we're
8 going to do three things. We're going to personally contact
9 by mail every student that did not get a Cal Grant that's
10 eligible when they appear on our campus this fall. Two,
11 we're distributing this July 150,000 posters to every middle
12 school and every high school and every classroom, so that
13 they can put up on the wall a poster about how to go to
14 college, and one part of that poster is going to include the
15 Cal Grant information and where and how to apply for that.
16 And thirdly, this summer there are statewide meetings of the
17 school counselors and school advisors and we're attending
18 those meetings and asking those school counselors to really
19 work very hard at pitching the Cal Grant.

20 CHAIRMAN BURTON: All right. Thank you very much,
21 Chancellor.

22 Any other questions, Senator Knight, did one pop
23 to your mind during --

24 SENATOR KNIGHT: Yes, I'll go ahead and ask him a
25 question. I'm interested in your position on providing in-

1 state tuition to illegal immigrants, and the reason I ask
2 that is that I guess our obligation is to provide an
3 education to all the children in this country regardless,
4 and we fulfill that obligation when we provide them with a
5 high school education, and if we now give them a further
6 benefit we are depriving, I think, somebody within the state
7 of that ability. So do you have a position on that?
8 MR. HAUCK: Senator, I believe it is a matter that
9 is before the legislature and I think we would leave it to
10 your wisdom to make that decision --
11 SENATOR KNIGHT: That's what I thought.
12 MR. HAUCK: -- to implement whatever your decision
13 is.
14 CHAIRMAN BURTON: Go ahead, Senator Karnette.
15 SENATOR KARNETTE: I am interested in how you're
16 going to approach the doctoral program, we talked a little
17 bit about that --
18 MR. HAUCK: Uh-huh.
19 SENATOR KARNETTE: -- with CSU and what your
20 opinion of that is, the CSUs being able to offer a doctorate
21 in education is the way I understand it?
22 MR. HAUCK: Right.
23 SENATOR KARNETTE: That's all?
24 MR. HAUCK: Right. The Ed.D.
25 SENATOR KARNETTE: The Ed.D.?

1 MR. HAUCK: Yes. Well, personally I would favor
2 that. I believe that it's important for California to be --
3 to provide that degree to those folks, particularly those
4 people working in school districts throughout the state who
5 need the degree to advance, and I don't believe that the
6 degree is being provided by the university, at least at the
7 level that it needs to be. And secondly, I think we need to
8 provide that in an affordable way and the private
9 universities today are not doing that. The cost to get an
10 Ed.D. from a private university can be anywhere from forty
11 to fifty thousand dollars. That will not fill the bill for
12 the people that we serve. So I would personally favor it.
13 CHAIRMAN BURTON: It's been called to my attention
14 that Cal Poly San Luis -- what is the policy of the State --
15 and I really have trouble saying State University having
16 graduated from a State College, but what -- kind of like
17 being a doctor of law. What is the policy versus California
18 resident versus out-of-state as far as, I guess, priority of
19 admittance, or is there one?
20 MR. HAUCK: The priority is for students within
21 the state.
22 CHAIRMAN BURTON: Well, Cal Poly seems to treat
23 them all equally, and I don't know if that's good, bad, or
24 indifferent, that's what they say. That's what they said.
25 I mean you may want -- I think it's something that you may

want to look at because you may just want to look at it.

MR. HAUCK: Okay.

CHAIRMAN BURTON: Okay. Any other questions? Any witnesses in support? Any witnesses -- is Governor Wilson coming in to show support?

MR. HAUCK: No.

CHAIRMAN BURTON: Move by Senator Johnson?

SENATOR JOHNSON: So moved.

CHAIRMAN BURTON: Call the roll.

MS. WEBB: Senator Knight?

SENATOR KNIGHT: Aye.

MS. WEBB: Knight Aye. Senator Romero?

SENATOR ROMERO: Aye.

MS. WEBB: Romero Aye. Senator Johnson?

SENATOR JOHNSON: Aye.

MS. WEBB: Johnson Aye. Senator Burton?

CHAIRMAN BURTON: Aye. Congratulations, William

MR. HAUCK: Thank you.

(Thereupon SENATOR KARNETTE was recorded as an Aye vote, making the final vote five to zero.)

CHAIRMAN BURTON: Kyriakos Tsakopoulos, Member, Trustees of the California State University.

MR. TSAKOPOULOS: Mr. Chairman, Committee Members,

1 my name is Kyriakos Tsakopoulos, and I'm honored to be
2 before you and to briefly share my thoughts about the
3 California State University system. I take great pride in
4 being affiliated with the CSU system, the nation's largest
5 system of higher education, which contributes substantially
6 to California's schools, economy, culture, and future.
7 If I am confirmed as a Trustee of the CSU system,
8 I will exercise my best independent judgment and work
9 constructively with the Board of Trustees, the CSU
10 administration, the faculty, and student representatives, as
11 well as continuing to consult with both the executive and
12 legislative branches to further three simple goals: To
13 exercise prudent judgment in supervising over all aspects of
14 the CSU system, to provide access for as many students as
15 possible to a quality higher education, and to keep tuition
16 and fees to a bare minimum.
17 I've had the opportunity to meet with Committee
18 members and their staff and to answer some of their
19 questions recently, and hope to do so in the future. I ask
20 that my previously submitted written statement be entered
21 into the record.
22 CHAIRMAN BURTON: Without objection.
23 MR. TSAKOPOULOS: I thank the Committee for its
24 time and I'm happy to try and answer any of the Committee's
25 questions.

1 CHAIRMAN BURTON: Senator Johnson?

2 SENATOR JOHNSON: No questions.

3 CHAIRMAN BURTON: Senator Romero?

4 SENATOR ROMERO: Again, I would raise similar
5 questions as I raised with the previous nominee, and that
6 is -- maybe we could start first of all with the state of
7 labor/management relations. What is your view in terms of
8 the current state of labor/management relations, how might
9 these be improved, and what, in terms of bargaining, with
10 any of the employee groups, what is your position in terms
11 of having an exchange of basic due-process rights in order
12 to set -- maybe as a way to obtain a salary increase? If
13 you can just explain a little bit about what your view is
14 and something specific on what those contracts should look
15 like?

16 MR. TSAKOPOULOS: I would like to thank the
17 Senator for the question. And I have not been actively
18 involved in negotiations, however, I would say that I
19 understand the concerns that the Senator has with the
20 negotiating of due-process rights, which are very important
21 rights. I think that the process needs to be injected with
22 more trust, more communication between the parties, but also
23 with a realistic perspective of where we are as a state
24 entering an uncertain economic period with an energy crisis,
25 and equally important concerns of the CSU system, which are

1 keeping fees low, tuitions low, and providing the necessary
2 economic resources to maintain operations of the plant
3 required for the university system.
4 SENATOR ROMERO: Let me just ask a second
5 question. It appears that CSU does not have a redirection
6 policy, and in those cases where a campus is declared
7 impacted, the SAT is being used as a means of beginning to
8 rank students. That's something that I think is the wrong
9 way to go. Can you tell me as CSU, I would hope, begins to
10 develop a redirection policy for those programs that are
11 impacted, what criteria do you think should belong in that
12 evaluation criteria to admit students for impacted programs
13 say perhaps versus impacted campuses, and what is the role
14 of the SAT and other standardized tests in that eligibility
15 criteria?
16 MR. TSAKOPOULOS: Thank you, Senator, for your
17 question, it's an important one.
18 Enrollment growth is a critical challenge to the
19 CSU system at this time, and currently the CSU system is
20 incorporating several different tools to deal with that
21 problem. One of them that is being considered is the
22 redirection program that you mentioned.
23 In the attempt to satisfy as many students as
24 possible, the CSU system has used impact -- or is
25 considering viewing each individual course individually as

1 to how it is impacted. The use of SAT scores and looking at
2 GPAs to rank students I see as possibly a way of admitting
3 those students who are best suited to enroll at that present
4 time in the CSU.
5 Similar to the problems with the Cal Grant
6 program, I believe that outreach programs to inform students
7 of how to take advantage of the programs, how to prepare
8 better for the SAT, and how to prepare better for admission
9 to the CSU would be very helpful.
10 SENATOR ROMERO: So you would favor keeping and
11 using the SAT as part of that evaluation criteria, even
12 though right now the CSU does not require the SAT for
13 students with a GPA above 3.0?
14 MR. TSAKOPOULOS: I would have to consider it
15 further, Senator, but I think that if it proves to be an
16 effective tool, then I would be in favor. However, again, I
17 think it would be very important to evaluate the use of that
18 and to make sure the use was proper, and I would be very
19 happy to consult with the Senator in the future regarding
20 this issue.
21 SENATOR ROMERO: I would like that. And again, I
22 clearly want to get to a redirection policy. I think that
23 there's a real need for that and I think we must move
24 expeditiously to do so. However, at a time that the UC is
25 considering the validity of the SAT, when virtually every

1 minority faculty association has pointed out the zero
2 correlation between the students' academic achievement and
3 this SAT score, I would hope that we could, and I will
4 engage with you and the other Trustees, and certainly the
5 CSU on having this discussion about what is the role of the
6 SAT, if any, as we go forward. I would look forward to
7 having that discussion with you.
8 MR. TSAKOPOULOS: Thank you, Senator.
9 CHAIRMAN BURTON: Senator Knight?
10 SENATOR KNIGHT: No questions.
11 CHAIRMAN BURTON: Senator Karnette?
12 SENATOR KARNETTE: No questions.
13 CHAIRMAN BURTON: Senator Johnson?
14 SENATOR JOHNSON: Well, I do feel constrained to
15 weigh in on that last point. I mean, to argue that there's
16 zero correlation just defies all logic. That correlation
17 may not track precisely, but to say that there's zero. And
18 so I'm pleased that you are expressing an open mind on the
19 subject, neither supporting nor opposing and going in there
20 with an open mind.
21 MR. TSAKOPOULOS: Thank you, Senator.
22 SENATOR JOHNSON: Move the nomination.
23 CHAIRMAN BURTON: Do I get a --
24 SENATOR JOHNSON: Go right ahead.
25 CHAIRMAN BURTON: But this is actually a question

1 to Senator Romero. I'm not quite sure -- a couple times you
2 mentioned that a condition in the collective bargaining
3 condition of a pay increase would be forfeiting due-process
4 rights. What specifically are we talking about?
5 SENATOR ROMERO: Well, I have been looking at it
6 too and this is something that is occurring within the CSU
7 that I feel has contributed to some of the malcontent with
8 the state of labor relations. Basically, if there is a due-
9 process right that contains in the statute as an opener for
10 negotiating a contract -- go below what's already in state
11 law. I think that we shouldn't go that way. It's basically
12 like, again, the State of California, if we say that we
13 have --
14 CHAIRMAN BURTON: Do you have like, I mean, par
15 exemplar?
16 SENATOR ROMERO: I don't have anything specific
17 right now. We can go ahead and give that to you. But
18 basically --
19 CHAIRMAN BURTON: Not here?
20 SENATOR ROMERO: No. But if --
21 CHAIRMAN BURTON: I mean if the statutes, you
22 know, guarantee whatever due process thing is --
23 SENATOR ROMERO: Right to a hearing, right to a
24 grievance hearing.
25 CHAIRMAN BURTON: I don't know if they can take

1 that away by bargaining or not, but that's -- do you have
2 any?
3 MR. REED: I don't think they can take that away
4 if it's statutory, but if it's in a contract then it's
5 negotiable and somebody might want to trade one benefit for
6 another benefit, it can always be modified.
7 CHAIRMAN BURTON: It's modifiable.
8 You have family here I see?
9 MR. TSAKOPOULOS: My mother, Elaine Tsakopoulos;
10 my father, Angelo Tsakopoulos; my little sisters, Chrissa
11 and Alexa, over there in the back; and Anthony, my nephew.
12 CHAIRMAN BURTON: Witnesses in support.
13 Witnesses in opposition. I'll move the nomination. Call
14 the role.
15 MS. WEBB: Senator Karnette?
16 SENATOR KARNETTE: Aye.
17 MS. WEBB: Karnette Aye. Senator Knight?
18 SENATOR KNIGHT: Aye.
19 MS. WEBB: Knight Aye. Senator Romero?
20 SENATOR ROMERO: Aye.
21 MS. WEBB: Romero Aye. Senator Johnson?
22 SENATOR JOHNSON: Aye.
23 MS. WEBB: Johnson Aye. Senator Burton?
24 CHAIRMAN BURTON: Aye.
25 MS. WEBB: Senator Burton Aye.

CHAIRMAN BURTON: Congratulations.

MR. TSAKOPOULOS: Thank you.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:25 p.m.)

CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing Senate Rules Committee proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Senate Rules Committee proceedings, or in any way interested in the outcome of said Senate Rules Committee proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of July 2001.

Michael J. Mac Iver
Shorthand Reporter

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JAMES F. PETERS, CSR, RPR
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RYAN SHERMAN, Consultant to Senator Romero

ALSO PRESENT

GENEVA BELL-SANFORD
California Conference of Local AIDS Directors

BARRY BROAD
Teamsters

DR. POKI NAMKUNG
California Conference of Local Health Officers

GERALD O'HARA, Member
Occupational Safety and Health Appeals Board

APPEARANCES CONTINUED

ALSO PRESENT

BRUCE POMER
Health Officers Association

TOM RANKIN
California Labor Federation, AFL-CIO

JUDITH REIGEL
County Health Executives Association

MARCY SAUNDERS,
Occupational Safety and Health Appeals Board

DAVID M. SOULELES, Chief Deputy Director
Health Services Department

TERRI THOMAS
California Association of Public Hospitals and Health Systems

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1 PROCEEDINGS

2 CHAIRPERSON BURTON: Senator Ortiz.

3 SENATOR ORTIZ: Okay. I'm happy to be first.
4 Good afternoon, Mr. Chairman and members. It's my
5 privilege today to introduce to you David Michael
6 Souleles. He has an incredible background.

7 Let me just first share with you in his period of
8 time working in the Department in his temporary capacity
9 as a Chief Deputy Director under the direction of the
10 Director Health Services, I have found him not only to be
11 very well informed and responsive and quite, I think,
12 responsive to the concerns of many of my colleagues as we
13 work through the Health Committee files and issues, but
14 believe him to be probably one of the strongest candidates
15 we've seen before this Committee given the breadth of his
16 experience, particularly in the areas I think that the
17 State needs to address today.

18 He has an impressive background. He was a
19 Director of the AIDS program at UC Irvine. He was a
20 program manager of student health services back in '91 at
21 UC Irvine. In '94 he was the AIDS program manager for the
22 Bureau of Preventive Health, which addressed issues of
23 education and outreach as well as promotion. In '95, he
24 served as the manager of the Bureau of Preventive Health,
25 overseeing programs, such as epidemiology, vital records,

1 many of the important public health issues that we are
2 dealing with as Californians in making policy.
3 In 1999, he was appointed Special Assistant to
4 the Director of the Department of Health Services and has
5 served through today. And his major areas of
6 responsibility include the management of traditional
7 public health programs, the management of Medi-Cal
8 programs, the development of budget programs and policies,
9 coordinating efforts with a multitude of State and local
10 offices and constituents. He's presently Chief Deputy
11 Director under the administrative direction of the
12 Director of Health Services. He's dealing with preventive
13 services, primary and family health, health information
14 and strategic planning, information and technology
15 services, multi-cultural health, women's health, public
16 affairs.
17 And in closing, let me just say, he has been
18 probably one of the most experienced candidates and recent
19 appointees to the Administration in the area of local
20 public health, which I feel very strongly about, and we're
21 finding it's affecting all districts throughout California
22 as we try to address and tackle building in information
23 systems and tracking communicable diseases.
24 He has a very strong relationship with the local
25 health officers throughout California, which has proven to

1 be invaluable as we seek direction and assistance. I am
2 proud to be here supporting his confirmation as Chief
3 Director with the Department of Health Services and I
4 respectfully request confirmation of him today.
5 CHAIRPERSON BURTON: Go ahead, Sir.
6 MR. SOULELES: Mr. Chairman and Members of the
7 Rules Committee, my name is David Souleles. Thank you for
8 the ability to speak with you this afternoon.
9 I'm excited about the opportunity afforded me by
10 Governor Gray Davis to serve as Chief Deputy Director for
11 the California Department of Health Services. The
12 Department is one of the largest and most complex health
13 and public health care organizations in the country with
14 an annual budget of nearly $28 billion.
15 The administrative demands alone of managing the
16 Department are significant. Additionally, on a daily
17 basis, the Department must ensure the safety of
18 California's food and water, respond to natural disasters
19 and the threat of bio-terrorism, deliver preventive health
20 programs and services, protect the public from
21 communicable diseases and provide health care coverage for
22 more than five million Californians.
23 I come to this position with 14 years experience
24 in public health as a health educator and public health
25 program manager. I've had the benefit of being educated

by one of the finest public universities in the country, the University of California, where I received my Bachelor of Arts degree at Irvine and my Master of Public Health Degree at Los Angeles.

I have submitted to you my resume and goals statement for this position and I've had an opportunity to meet with most of you or members of your staffs to discuss issues of particular importance and concern.

I will be happy to answer any questions you may have and look forward to your favorable consideration.

Thank you.

CHAIRPERSON BURTON: Senator Romero.

SENATOR ROMERO: Thank you. Can you just talk a little bit about some of the long-standing concerns about racial and ethnic disparities in terms of access to health care and what you would propose to do or what you are doing to address this critical issue?

MR. SOULELES: Yes, Senator, certainly. Racial and ethnic health disparities are a significant concern to us in the State of California, when you look at a variety of different public health indicators, whether it's infant mortality or issues of asthma or diabetes. We often see very, very shocking differences between what you would see for white populations and what you would see say for African-American or Latino populations.

1 The Department does a variety of things along the
2 lines of trying to respond to these issues. In all of our
3 different program areas really targeting and focusing our
4 efforts on specific populations where there are the
5 greatest levels of risk is important to us. As an
6 example, in our HIV programs, we would do targeting of
7 populations at high risk, African-American populations,
8 right now, women of color in particular. So program
9 services funding are targeted to those populations.
10 Additionally, on a more global level, the Health
11 and Human Services agency right now under Secretary
12 Grantland Johnson has convened a task force of all of the
13 agencies within Health and Human Services. Director Diona
14 Bonta for the Department of Health Services and Director
15 David Carlisle from OSHPD have been asked to co-chair that
16 effort to really look at what we can do as an agency to
17 reach the healthy people 2010 target of eliminating racial
18 and ethnic health disparities in the United States and
19 hence in California.
20 The State of California was selected as one of
21 five states that will be working in partnership with the
22 American Public Health Association and the Surgeon
23 General's Office to convene a task force of folks
24 concerned about this issue statewide. And, in fact, the
25 first meeting of that group is later this week in San

Francisco. And we as a Department will be participating very actively in that effort.

SENATOR ROMERO: Thank you.

CHAIRPERSON BURTON: Senator Johnson.

SENATOR JOHNSON: No questions.

CHAIRPERSON BURTON: Senator Knight?

COMMITTEE MEMBER KNIGHT: Yes, thank you, Mr. Chairman.

CHAIRPERSON BURTON: You're welcome.

COMMITTEE MEMBER KNIGHT: It's been indicated that you didn't know how many children we had were suffering from lead poisoning and indicated that there may be some 38,000 kids in the State, of which only 3,700 of them are being treated. I want to know, you know, how do kids get lead poisoning?

MR. SOULELES: There are a number of different issues. One of the biggest problems and risks for lead poisoning for children is children that live in housing that's older housing that was painted when lead was still in paint. And you find this really in housing stock even before 1978.

COMMITTEE MEMBER KNIGHT: Question right there. Do the kids have to eat the paint to get the poisoning?

MR. SOULELES: They can eat the paint. It can also come from inhalation. If there's been remodeling

1 remediation work that's going on --
2 COMMITTEE MEMBER KNIGHT: You mean lead-based
3 paint exudes a fume that can provide lead poisoning?
4 MR. SOULELES: It's the particles that are in the
5 dust, for example, when sanding might take place or that's
6 in the chips of paint that may fall to the ground. And so
7 children playing in neighborhoods and households where
8 there is lead paint that's been present, they may eat it,
9 they may get it on their hands and touch their mouths,
10 they may inhale it if remodeling work is going on. These
11 are all ways they can get it.
12 COMMITTEE MEMBER KNIGHT: How much do they have
13 to inhale to get lead poisoning.
14 MR. SOULELES: I could not tell you the exact
15 amount of how much of an exposure would be necessary to
16 cause lead poisoning. That's something I certainly can
17 have our program staff get some information to your office
18 though in terms of the specific dosage amounts.
19 COMMITTEE MEMBER KNIGHT: Secondly, the
20 Administration is contemplating amnesty for some three
21 million illegal aliens. If that happens, what's that
22 going to do to the State of California?
23 CHAIRPERSON BURTON: The Federal Administration?
24 COMMITTEE MEMBER KNIGHT: Yes.
25 CHAIRPERSON BURTON: The Bush Administration?

COMMITTEE MEMBER KNIGHT: Yeah.

SENATOR JOHNSON: It ain't Gore.

(Laughter.)

COMMITTEE MEMBER KNIGHT: Pardon?

CHAIRPERSON BURTON: Just asking.

(Laughter.)

MR. SOULELES: In terms of issues of health and public health, I mean, I think we're always concerned about populations that we are responsible for core public health. And I think alluding to what Senator Romero asked earlier to the extent that we see disparities in health status based on ethnicity and race, we'll have to continue to focus our programs and target our programs on the populations where we see the greatest risk.

When the Cambodian resettlement occurred in Long Beach in the late seventies and eighties and the Long Beach Health Department among other agencies within the City was responsible for responding to the influx of immigrants into the City, really having to target programs to deal with language issues, to deal with access issues in order to ensure core public health functions and core public health is assured for the people.

COMMITTEE MEMBER KNIGHT: So do you have a plan to increase your capabilities if, in fact, this happens?

MR. SOULELES: I think we're always looking to

1 the horizon with whether it's populations coming in as a
2 result of amnesty or a result of immigration, yes, that we
3 would work towards that.
4 CHAIRPERSON BURTON: Senator Karnette.
5 SENATOR KARNETTE: No questions.
6 CHAIRPERSON BURTON: What's the process by which
7 the Department would use in determining whether or how to
8 regulate Chromium 6 in drinking water?
9 MR. SOULELES: Chromium 6 in drinking water is an
10 issue we've been spending quite a bit of time on. We have
11 requested through our Director from the Office of
12 Environmental Health Hazard Assessment that they provide
13 us with a public health goal for Chromium 6 in the water,
14 which would be sort of the ideal if you didn't have to
15 factor in cost, if you didn't have to factor in
16 technology, what would the level be. OEHHA should be
17 developing that goal shortly.
18 In addition, OEHHA has requested the University
19 of California to convene an expert panel to assess the
20 carcinogenicity of Chromium 6 in water. We do know that
21 Chromium 6 is carcinogenic when inhaled, but the science
22 is much less clear on water. And so this scientific
23 review panel hopefully will provide us recommendations
24 later in August.
25 Once we have the public health goal from OEHHA

1 and the information from the expert advisory panel, our
2 Department will set forth on developing a drinking water
3 standard, called a maximum contaminant level. We expect
4 that process to be complete by January, 2004.
5 CHAIRPERSON BURTON: Witnesses in support?
6 Briefly.
7 MS. BELL-SANFORED: To this distinguished board
8 and to the Chair, Senator John Burton, my name is Geneva
9 Bell-Sanford. I'm the AIDS program coordinator for San
10 Joaquin County Public Health Services.
11 I'm here representing the California Conference
12 of Local AIDS Directors, CCLAD. CCLAD is a statewide
13 organization representing 61 health jurisdictions. And as
14 well as an affiliate of the California Conference of Local
15 Health Officers, our mission is to address people living
16 with HIV.
17 As such, the Conference of Local Aids Directors
18 would like to take this opportunity to support the
19 confirmation of David Souleles as Chief Deputy Director
20 for the California Department of Health Services.
21 Prior to his current appointment, Mr. Souleles
22 was the AIDS director for the City of Long Beach. And in
23 that position he was a member of CCLAD, as well as a past
24 president of CCLAD. His commitment to public service is
25 note worthy, as well as his well-respected representation

1 on public health issues in the State of California.
2 Again, we the California Conference of Local Aids
3 Directors would like to support the confirmation of Mr.
4 David Souleles.
5 CHAIRPERSON BURTON: Thank you.
6 MS. THOMAS: Terri Thomas on behalf of the
7 California Association of Public Hospitals and Health
8 Systems. I'd simply say that Mr. Souleles is extremely
9 knowledgeable, very accessible and smart. In our view,
10 who could ask for anything more. We urge your
11 conformation.
12 Thank you.
13 DR. NAMKUNG: Thank you for this opportunity to
14 speak on behalf of the California Conference of Local
15 Health Officers in support of David Souleles' nomination.
16 I'm Dr. Poki Namkung. I'm the Health Officer of the City
17 of Berkeley and president-elect of the California
18 Conference of Local Health Officers.
19 I'm going to be brief. David Souleles is a rare
20 individual. It is unusual to find someone who can so
21 quickly grasp the complexity of a problem or a situation.
22 And public health problems are often complex. They
23 involve epidemics, outbreaks, securing the health of
24 children and families, coordinating federal, State and
25 local health systems, gaining public and political support

1 and doing all of this usually with not enough money.
2 So observing Mr. Souleles being confronted with a
3 problem, one can see his mind moving almost immediately to
4 solutions and how to accomplish them. He is a superb
5 administrator, whether it be managing resources, building
6 consensus or motivating staff.
7 The conference has enjoyed an excellent working
8 relationship with Mr. Souleles, because of his work as
9 assistant to the Director, Dr. Diona Bonta, and the
10 communications has vastly improved. The partnership
11 between local public health and the State Department of
12 Health Services has never been better, and this is crucial
13 because it is that partnership that protects and promotes
14 the health of the people of California.
15 It is the Conference's opinion that the State of
16 California would be hard pressed to find a better
17 candidate than Mr. Souleles and we wholeheartedly support
18 his nomination.
19 Thank you.
20 CHAIRPERSON BURTON: Thank you. Yes, ma'am.
21 MS. REIGEL: Judith Reigel with the County Health
22 Executives Association of California. We represent the
23 directors of the county and city health departments. And
24 I'd just like to echo Dr. Namkung's words. The current
25 Department of Health Services has gone a long way in

1 improving the critical working relationship between the
2 State and local health departments. David Souleles in his
3 role at the State has had a big role in that and his very
4 strong background. And local health, public health
5 programs he's helped immensely. We strongly support his
6 confirmation.
7 MR. POMER: Mr. Chairman, Bruce Pomer with the
8 Health Officers Association of California. In my 30 years
9 of experience working with the Department of Health
10 Services and Directors, this David Souleles appointment
11 represents one of the finest appointments along with the
12 other staff under Dr. Diona Bonta in terms of being up to
13 speed immediately on public health issues and
14 understanding what we at the local level go through in
15 trying to implement programs.
16 Therefore, we wholeheartedly support this
17 appointment.
18 Thank you.
19 CHAIRPERSON BURTON: Witnesses in opposition?
20 Hearing none, moved by Senator Karnette.
21 Secretary call the role.
22 COMMITTEE SECRETARY WEBB: Senator Karnette?
23 SENATOR KARNETTE: Aye.
24 COMMITTEE SECRETARY WEBB: Karnette aye.
25 Senator Knight?

SENATOR KNIGHT: Aye.

COMMITTEE SECRETARY WEBB: Knight aye.

Senator Romero?

SENATOR ROMERO: Aye.

COMMITTEE SECRETARY WEBB: Romero aye.

Senator Johnson?

SENATOR JOHNSON: Aye.

COMMITTEE SECRETARY WEBB: Johnson aye.

Senator Burton?

CHAIRPERSON BURTON: Aye.

COMMITTEE SECRETARY WEBB: Burton aye.

CHAIRPERSON BURTON: Actually, the confirmation will not be official till you get the Bill Lloyd handshake.

(Laughter.)

CHAIRPERSON BURTON: And he's not here, so you're kind of held in abeyance till we can get him to show up. Maybe, he'll just --

SENATOR JOHNSON: Put the matter on call, Mr. Chairman.

(Laughter.)

CHAIRPERSON BURTON: Drop by his office and give him a high five.

Congratulations.

MR. SOULELES: Thank you, sir.

(Applause.)

COMMITTEE MEMBER KNIGHT: Isn't there anybody here?

CHAIRPERSON BURTON: Nobody can take Bill Lloyd's place.

I'm sorry, did you have family here? That will take the place of Bill Lloyd.

MR. SOULELES: I'd like to actually, first, acknowledge California Health Department Director, Diona Bonta who is here and who's been a great support and encouragement for me. And then also my family, my partner Rubin Carillo who is here, my parents Victor and Bonnie Souleles who are here, my brother and sister-in-law Dean and Sandy Souleles, and my nephew John, who's, I think, wondering how he ended up in a Senate hearing on his vacation.

Thank you very much.

(Laughter.)

(Applause.)

CHAIRPERSON BURTON: Senator, is it all right if we get Gerry O'Hara out of the way?

Gerry.

MR. O'HARA: Is this on?

CHAIRPERSON BURTON: Yeah.

MR. O'HARA: Mr. Chairman and members, Gerald

1 O'Hara. I'm the Governor's appointee to the CalOSHA
2 Appeals Board. I've had a bit of background and
3 experience in the area.
4 In 1973 when then Governor Reagan was looking at
5 the CalOSHA thing, we were included in it, and I was
6 appointed to the OSHA Standards Board, the law making body
7 part of CalOSHA at that time, and reappointed by Governor
8 Reagan before he left office.
9 Governor Jerry Brown twice appointed me to the
10 Board. I served a total of 16 years on the OSHA Standards
11 Board. Governor Deukmejian didn't appoint lobbyists, so
12 he didn't appoint me at all, and that ended my service in
13 1990.
14 I've served on many -- the Governor's task force
15 on workers' compensation, which is directly related to
16 occupational safety and health, of course. And I served
17 for seven years on the Commission on Health and Safety and
18 Workers' Compensation, appointed by two different speakers
19 of the Assembly.
20 The OSHA Appeals Board handles appeals of
21 citations of on-the-job violations, and it is a growing
22 number. The Legislature has increased the fines. And as
23 a result, we have some like half of the citations are now
24 appealed.
25 I don't know what else I could say. Many of you

1 know me from the many years I served around here as a
2 lobbyist for the Teamsters Union. I retired from that
3 March 13th, and the Governor appointed me to this position
4 on March 15th of this year.
5 If you have any questions, I'm very willing to
6 try to answer them.
7 CHAIRPERSON BURTON: Senator Johnson?
8 SENATOR JOHNSON: No questions.
9 CHAIRPERSON BURTON: Senator Romero.
10 SENATOR ROMERO: Yes. Thanks. It's good to see
11 you. Let me just ask, though, a recent study by the
12 Division of Occupational Safety and Health found that we
13 issue fines against employers, but frequently they're
14 reduced on appeal by totally or a significant amount.
15 What is your thought with respect to fines, imposition of
16 fines and actually imposing those fines on employers who
17 have been found to have committed violations?
18 MR. O'HARA: I'm glad you brought that up,
19 Senator. The Appeals Board is generally giving credit for
20 those reductions. They, in fact, are not the body that is
21 reducing the fines. We have a situation like you might
22 see in a crime show where the district attorney comes to
23 the Judge and has a deal, and that is what's happening,
24 and that's the long and the short of it.
25 And I believe that there really is going to have

to be some time spent on this, so that there is a reality, so that this effect that we are trying to have there is a good reason why we have worker health and safety on the job. These workers have given up the right to sue. They have a right to a safe workplace, and we have to insist that this be followed through on. And, of course, those same players if they follow through on it, they're going to save themselves a whole bunch of money on workers' compensation premiums. So all this is all connected.

And I agree with you that people should not be getting off without paying fines that are bearable at least. And in many cases no case is made whatsoever about how bearable the fine is. In many cases, they just merely say that it would be difficult for us to pay this fine. And, frankly, you know, fines are supposed to hurt people. We're trying to get people to tow the line.

And while I don't want to sound like a hanging judge, the truth is that all these issues have to be considered, and they're on my plate for sure.

SENATOR ROMERO: Thank you.

COMMITTEE MEMBER KNIGHT: Question.

CHAIRPERSON BURTON: Senator Karnette.

SENATOR KARNETTE: Well, I think it's Senator Knight's --

SENATOR KNIGHT: Excuse me.

(Laughter.)

CHAIRPERSON BURTON: Senator Karnette, I've still got the gavel.

SENATOR KARNETTE: Oh, I'm sorry. I thought you thought I was Senator Knight.

(Laughter.)

SENATOR KARNETTE: I noticed one of your goals was to -- you want to look at the backlog of requests for reconsideration, and you want to clean up this as a long-term goal. How do you see us doing that or you're doing it?

MR. O'HARA: Well, we've had some staff dislocation there in the past. And as a result, the people who are supposed to be on the job doing that particular area just, you know, weren't able to or there wasn't enough people on the job.

Right now, I think we probably are staffed well enough and we have another lawyer coming aboard soon, so that we will be able to catch up with that, but we have a significant number of requests for reconsideration that have been hanging for four sometimes five years.

And that it isn't a way to do things, because in the meantime those unsafe working conditions are not abated while the employer does this request for reconsideration. And if we don't promptly act on the

1 request for reconsideration, we're not doing our job to
2 provide the safe workplace.
3 SENATOR KARNETTE: Also, isn't it true that you
4 have to -- that when they look at various decisions, they
5 have to go back into the past, that could be simplified do
6 you think?
7 MR. O'HARA: Yeah, we do have everyone of our
8 decisions are relied one on the other over 27 years. And
9 we're really going to have to go through them and review
10 them and find out what precedent cases should be precedent
11 cases and march forth from there.
12 It just doesn't make sense that we have this huge
13 body of precedent decisions. But when you start off in
14 something like that, I guess it may seem like the right
15 idea and then all of a sudden, you get to the point where
16 you're blocked here, there and everywhere.
17 CHAIRPERSON BURTON: Senator Knight, I believe
18 you had a question.
19 COMMITTEE MEMBER KNIGHT: Thank you, Mr.
20 Chairman. I didn't understand your answer when you were
21 talking about the fines being reduced and you indicated
22 that there were deals being made, and I wondered who the
23 deals were between?
24 MR. O'HARA: Well, this is the people with the
25 Division of Occupational Safety and Health who do the

1 citations and they do the enforcement, and they come to
2 the hearing before the OSHA Appeals Board. And they are
3 the enforcement people of the CalOSHA program.
4 COMMITTEE MEMBER KNIGHT: So who are the deals
5 being made between?
6 MR. O'HARA: Well, it would be the employer and
7 the enforcing agencies whoever is handling the case?
8 COMMITTEE MEMBER KNIGHT: CalOSHA?
9 MR. O'HARA: Whoever is handling the case for the
10 Division of Occupational Safety and Health that day.
11 COMMITTEE MEMBER KNIGHT: Then they make a deal
12 and come to the Board and present that deal to the Board?
13 MR. O'HARA: That's right.
14 COMMITTEE MEMBER KNIGHT: And the Board approves
15 it?
16 MR. O'HARA: The Board has no choice, if they're
17 not going to prosecute the case, that's where they're
18 going to stand, you know.
19 COMMITTEE MEMBER KNIGHT: Then I guess if the
20 enforcing agency decides that it's reasonable to reduce
21 the fine, then is that a part of the process?
22 MR. O'HARA: That's part of the process.
23 SENATOR KNIGHT: Okay.
24 CHAIRPERSON BURTON: Witnesses in support
25 briefly.

1 MR. RANKIN: Tom Rankin, California Labor
2 Federation. I've served with Gerry on the Occupational
3 Safety and Health and Workers' Comp Board. And he's shown
4 a tremendous ability to protect the interests of workers
5 who get injured on the job. He'll bring that to this job.
6 He'll bring his years on the Standards Board. He
7 understands the regulations that he's now adjudicating
8 over. And I think he will help Marcy Saunders bring this
9 OSHA Appeals Board back to where it should be.
10 Thank you.
11 CHAIRPERSON BURTON: Marcy.
12 MS. SAUNDERS: Senator Burton and Members of the
13 Rules Committee, my name is Marcy Saunders and I'm the
14 Acting Chair for the CalOSHA Appeals Board. I'm here to
15 speak on behalf of Mr. O'Hara. I find him to be an
16 absolute wealth of knowledge, to be an extremely ethical
17 man and to be very, very objective.
18 And in the months that I have worked with him so
19 far, I really don't know what I would have done without
20 him. He is very correct when he says that we are four to
21 five years in backlogs and have thousands and thousands of
22 appeals that come before us every year. And I have found
23 him to be extremely objective, which I think is very
24 important in our position, and also to ask some very
25 intriguing questions that make us realize we do have to go

1 back, we do have to look at these other decisions and
2 decide which are going to be precedential. I think he's
3 wonderful for the Board.
4 Thank you.
5 MR. BROAD: Mr. Chairman and Members, Barry Broad
6 on behalf of the Teamsters. Gerry hired me. He and I
7 spoke and worked together for 15 years every day. I
8 really know this gentleman. He's a person of
9 extraordinary integrity and decency and common sense. I
10 can't think of anybody who'd be better in this kind of a
11 position. I urge an aye vote.
12 Thank you.
13 CHAIRPERSON BURTON: Witnesses in opposition?
14 Move the nomination.
15 COMMITTEE SECRETARY WEBB: Senator Karnette?
16 SENATOR KARNETTE: Aye.
17 COMMITTEE SECRETARY WEBB: Karnette aye.
18 Senator Knight?
19 COMMITTEE MEMBER KNIGHT: Aye.
20 COMMITTEE SECRETARY WEBB: Knight aye.
21 Senator Romero?
22 SENATOR ROMERO: Aye.
23 COMMITTEE SECRETARY WEBB: Romero aye.
24 Senator Johnson?
25 SENATOR JOHNSON: Aye.

COMMITTEE SECRETARY WEBB: Johnson aye.

Senator Burton?

CHAIRPERSON BURTON: Aye.

COMMITTEE SECRETARY WEBB: Burton aye.

CHAIRPERSON BURTON: Congratulations, Gerry.

(Applause.)

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HEARING

STATE CAPITOL

SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 20, 2001

2:45 P.M.

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APPEARANCES

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SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

ROY MABERLY, Assoc. of Black Correctional Workers

JIM AMOS, California Correctional Women's Facility

CARLISLE MITCHELL

CHAUNCET THOMAS

RICHARD DREGAN

STEPHEN KENT, California Correctional Supervisors

FRANK SANDERS, Association of Correctional Workers

CHARLES PETERSON, Central California Women's Facility

BARBARA YOUNG, Chowchilla Women's Prison

ALSO PRESENT, cont.

CHARLES BABILLA,Prison Industries

MANNY RIVERA, Phoenix House Foundation

TED HUNT, Los Angeles Police Protective League

TIM YARYAN,Assoc. Los Angeles County Deputy Sheriffs

JOHN CURRIER, Rincon San Luiseno Band of Mission Indians

BARRY BROKAW, Agua Caliente Band of Puela Indians

ROD BLONIEN, California Commerce Club

JOHN LATIMER, Picayune Rancheria

MARK MACCARO, Pechanga Band of Luisano Mission Indian

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Witness in Opposition:

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1 PROCEEDINGS

2 CHAIRMAN BURTON: Governor's appointees.
3 Gwendolyn Mitchell, Warden, Central California Women's
4 Facility.
5 Good afternoon.
6 MS. MITCHELL: Good afternoon.
7 CHAIRMAN BURTON: We have your statement and
8 goals, for the record, so if you want to just briefly
9 comment on some of the issues that you hope to achieve.
10 MS. MITCHELL: Okay.
11 CHAIRMAN BURTON: Go ahead, ma'am.
12 MS. MITCHELL: Thank you.
13 I'm currently serving as the Warden at Central
14 California Women's Facility, and I was officially appointed
15 in November of -- November 29th, 2000. I began my career as
16 a correctional officer and had served in several
17 supervisory/management capacities. I'm a member of numerous
18 community service and professional organizations, including
19 the local chamber of commerce and Rotary club. I live in
20 Chowchilla and am an active member of the local community.
21 I'm enjoying the challenge of my current assignment as the
22 Warden of CCWF.
23 Thank you, and at this time I will address any
24 questions that you might have in regards to the operation of
25 the facility.

1 CHAIRMAN BURTON: Senator Johnson.

2 SENATOR JOHNSON: Thank you, Mr. Chairman.

3 I have, as the members of the Committee know, a
4 strong predisposition to support those individuals nominated
5 by the Governor of whatever political party. I believe that
6 Governors ought to have the ability to put together a team
7 that they're happy with.

8 Everything that I've heard about you personally
9 has been positive. But there have been some somewhat
10 embarrassing revelations concerning some people hired by the
11 present administration, some people appointed or reappointed
12 by the present administration. So I'm not picking on you.
13 I intend to in the future or at least for the foreseeable
14 future to ask every nominee that comes before us a couple of
15 questions.

16 CHAIRMAN BURTON: On which energy stock you have.

17 SENATOR JOHNSON: Well, it kind of relates to
18 that, Mr. Chairman. Not to put too fine a point on it, are
19 you required in this position to file a Statement of
20 Economic Interest?

21 MS. MITCHELL: Yes, I am.

22 SENATOR JOHNSON: And have you done so?

23 MS. MITCHELL: Yes, I have.

24 SENATOR JOHNSON: And you did that within 30 days
25 of your appointment or what was the timeframe?

1 MS. MITCHELL: It was very close to my
2 appointment. I believe it was within the 30 days.
3 SENATOR JOHNSON: Uh-huh. And again, I'm not
4 picking on you, I'm just going to ask these questions of
5 everybody for a while. These are questions that I haven't
6 asked and, frankly, at least in the public confirmation
7 period or process hasn't been asked by other members of the
8 Committee as well.
9 What is your impression of what is required of you
10 in terms of not only the letter of the law but the spirit of
11 the law with respect to potential conflicts of interest in
12 terms of your private financial situation?
13 MS. MITCHELL: In terms of the letter of the law,
14 my understanding is that my financial situation should be in
15 compliance, total compliance with the law.
16 SENATOR JOHNSON: Okay. And again, I'm not
17 picking on you.
18 MS. MITCHELL: Okay.
19 SENATOR JOHNSON: But what kinds of advice or
20 training or contact, with respect to the reporting
21 requirements that you have and complying with both the
22 letter and the spirit of the law, have you received from the
23 Governor or the Governor's office?
24 MS. MITCHELL: I have not received any special
25 training, sir.

1 SENATOR JOHNSON: Thank you very much.
2 Thank you, Mr. Chairman.
3 CHAIRMAN BURTON: Senator Romero.
4 SENATOR ROMERO: Thank you.
5 Let me just ask you a question. The Women's
6 Caucus of the State Legislature is very interested in taking
7 a closer look at children of the incarcerated, particularly
8 of women inmates. Can you tell me what you have done or
9 what the facility has done to perhaps assist women inmates
10 so they do not lose contact with their children, visitation
11 periods, programs that assist the children of the inmates?
12 Can you give me a better understanding of what you have done
13 to promote keeping that family together?
14 MS. MITCHELL: I can give you one specific example
15 of my efforts to try to continue the bond between female
16 inmates and their children. For Mother's Day, during the
17 Mother's Day period of time, there were several inmates who
18 for some reason or another had not had an opportunity to
19 visit with their kids, their children in several years --
20 for several years. So I worked with the Diocese in bringing
21 the children to the prison so that they would have an
22 opportunity to visit with their mothers. There were several
23 inmates that had not seen their children for eight years,
24 six years, for a period of time. I intend to continue this
25 program and am evaluating the process of formulating the

1 program for next year.

2 SENATOR ROMERO: Thank you.

3 CHAIRMAN BURTON: Senator Knight.

4 SENATOR KNIGHT: No questions.

5 CHAIRMAN BURTON: Senator Karnette.

6 SENATOR KARNETTE: I understand that there have
7 been some problems with health care in the past and I was
8 wondering what you're doing to ensure that the custody side
9 and health care work together? What kind of examples can
10 you give us to show that this is happening so that health
11 care -- I know that's a primary concern.

12 MS. MITCHELL: Health care is a primary concern,
13 especially at our institution since CCWF has the sickest
14 inmates in the female population. So we have a very strong
15 commitment to providing health care services to those
16 inmates.

17 As far as the responsibility for health care is
18 concerned, I'm committed to working with my health care
19 manager cooperatively to make sure that the inmates have
20 total access to health care services. The health care
21 manager and I meet on a regular basis weekly, we have formal
22 meetings with the executive staff to address any concerns
23 relative to health care delivery or health care access.

24 I meet with the Women's Advisory Committee at the
25 institution, which are the inmates. They represent the

1 inmates. I meet with them so that they have an opportunity
2 to address any issues over and beyond the issues that they
3 have addressed with the health care manager to me, so that I
4 can follow up on those issues if they're outstanding.
5 I also have activated a position that previously
6 was activated, but was lost because of the budget, though I
7 activated that position. And that position is a liaison to
8 the omsbudsperson, and it's a neutral person that the
9 inmates have access to in case they have any problems.
10 I have created an additional transportation team,
11 so that inmates will -- we will have more staff to take
12 inmates out for health care services delivery. I've also
13 just recently been able to work with the prison -- we have a
14 prison across the street, Ballard State Prison for Women, to
15 work with them in reducing the number of staff that it takes
16 to provide coverage at the hospital, which will allow us to
17 have additional staff so that we can take additional -- a
18 greater number of the inmates out for medical treatment.
19 SENATOR KARNETTE: I was interested in your
20 comment that you have more ill inmates because people are
21 shipped to your facility from other prisons. Is that what I
22 heard?
23 MS. MITCHELL: Yes, that's what you heard. We
24 have a skilled nursing facility at our prison, a licensed
25 skilled nursing facility, and therefore we're able to

1 provide a slightly higher care of medical -- level of
2 medical care, not the type that we do in a hospital, but to
3 provide the care for those inmates. So since we do have the
4 skilled nursing facility and inmates that are very sick,
5 inmates that are terminal, inmates that need chronic care
6 treatment, et cetera, are sent to Central California Women's
7 Facility.
8 SENATOR KARNETTE: Thank you.
9 MS. MITCHELL: You're welcome.
10 CHAIRMAN BURTON: Do you have any family with you
11 that you'd like to introduce?
12 MS. MITCHELL: Yes, I do, if I may.
13 CHAIRMAN BURTON: Go ahead.
14 MS. MITCHELL: Thank you. I have my father,
15 Richard Greg. My son, Carlisle Frank Mitchell, from
16 Houston. My daughter, Chauncet Mitchell-Thomas, from
17 Houston. And my new grandbaby on the way.
18 (Laughter.)
19 Her husband and my son, Ensome Thomas.
20 CHAIRMAN BURTON: I wanted to ask you a couple of
21 questions. You say there are 265 inmates currently on the
22 waiting list for vocational program, 244 for academic
23 program, that's on page 6 of your prepared statement, and
24 177 on the general support service waiting list, which is
25 five, six, close to seven hundred, I guess, people on

1 various waiting lists. What's the total population of your
2 institution?
3 MS. MITCHELL: The total population Friday was
4 3,118.
5 CHAIRMAN BURTON: So what is that, is that because
6 of budgetary problems that you have that there are no slots
7 for these people or what?
8 MS. MITCHELL: Well, several of the inmates on the
9 waiting list are currently employed, however, they're on
10 waiting lists of classes for programs that they want to get
11 into that don't have any slots.
12 CHAIRMAN BURTON: All right. So they may be in A,
13 but they can't get in B, or vice versa?
14 MS. MITCHELL: Correct, yes, sir.
15 CHAIRMAN BURTON: Are there any that are waiting
16 and there's no slots available or anything?
17 MS. MITCHELL: Yes, I have approximately a hundred
18 of them are waiting, but they're waiting for various
19 reasons, maybe some processing. But I do have two
20 classrooms that I am currently hiring a teacher for and
21 those will provide positions for 54 inmates.
22 CHAIRMAN BURTON: All right. So basically,
23 funding and staffing is not necessarily a great problem in
24 getting them into worthwhile endeavors in there?
25 MS. MITCHELL: No, sir.

1 CHAIRMAN BURTON: I'm reading the drug thing and
2 it's just kind of -- and I know you won't have the answer, I
3 don't think you would, but kind of out of curiosity.
4 In 2000 you confiscated 67 grams of heroin, 47
5 grams of marijuana, which is a lot of marijuana, and less
6 than a gram of cocaine, which is really hardly any. And
7 then if you go through May of this year, the heroin, at
8 least percentagewise, is down, the marijuana percentagewise
9 is way down, cocaine is a little bit up, and then
10 methamphetamine, which didn't show on the other, is up.
11 Is there any way to know why there's so little
12 cocaine, and although it isn't -- I mean it's a lot, but
13 isn't that a lot of heroin and marijuana. It's like three
14 ounces, which again is not a lot of marijuana. I guess
15 there's no way to know why which drug is a drug of choice
16 for people in there, or did people -- yet you find with a
17 drug, let's say it was heroin, can you go back and then look
18 at their record or history and see whether or not they got
19 in as drug related or they were addicts or something? What
20 do you do besides the discipline if you catch somebody say
21 with something like heroin, as opposed to marijuana? Do you
22 go see if they're addicted and try to get them into a
23 program, or how do you do that?
24 MS. MITCHELL: Usually, there is some indication
25 in a person's central file of whether they have past drug

usage or not. It's not necessarily true, because they could have acquired it after formulation of their central file. However, we do have a substance abuse program at the prison. The substance abuse program has 506 slots, and inmates that have up to 18 months left before they parole are eligible for the program. Over and beyond that, we also have substance abuse classes at the institution that are available to the inmates that may not be leaving within a short period of time. So we do have some programs that the inmates can access. And then we do mandate for that particular issue.

CHAIRMAN BURTON: So if like you catch somebody with heroin or something, besides the discipline, you mandate them into a program or what?

MS. MITCHELL: Yes. In fact, Title 15 has as part of the disciplinary process a mandate into a substance abuse program.

CHAIRMAN BURTON: I guess the stuff can get in in a variety of people, the visitors, God forbid with employees, or somehow, but this doesn't really -- I'm not denigrating, but it doesn't seem like that with 3,100 people, 117 grams of stuff doesn't seem like -- I mean it's a problem, but it's not like a monumental problem as such.

MS. MITCHELL: I would say that it's not as monumental as you may find in some institutions.

1 CHAIRMAN BURTON: Yeah, it's still too much.
2 MS. MITCHELL: But I would like to think that our
3 programs are being successful.
4 CHAIRMAN BURTON: Yes. Well, it looks like -- at
5 least like I say the difference from the first five months
6 of this year versus all of last year, it looks like, as I
7 said, heroin's down, marijuana's way down, cocaine is up a
8 tad, and then all of a sudden methamphetamines are showing
9 up for whatever point.
10 Witnesses in support.
11 MR. MABERY: Chairman Burton and Rules Committee
12 Members, my name is Roy Mabery, I'm the State President,
13 Association of Black Correctional Workers. Thank you for
14 the opportunity of speaking in support of Warden Mitchell.
15 And I'm here representing our organization, and I want you
16 to know that we give her a hundred percent support
17 organizationally and personally. If the percentages would
18 reach to 200, based on the way I've seen her present and the
19 way she's carried herself and performance and the history
20 that she has in custody, I would definitely allow 200
21 percent performance. So with complete support, Senator
22 Johnson.
23 CHAIRMAN BURTON: Next please, briefly.
24 Yes, sir.
25 MR. AMIS: Good afternoon, my name is Jim Amos.

1 I'm currently the Supervisor of Academics at CCWF, and I'm
2 just here to very strongly support Warden Mitchell and the
3 confirmation process here. In the time she's been at CCWF
4 I've come to know her as an education advocate and I believe
5 she's courageous and is a fine visionary leader. I strongly
6 support her confirmation.
7 CHAIRMAN BURTON: Thank you. Next please.
8 MR. MITCHELL: My name is Carlisle Mitchell. I'm
9 the son of Gwendolyn Mitchell. I'm in support of her
10 confirmation.
11 (Laughter.)
12 CHAIRMAN BURTON: And you better be.
13 (Laughter.)
14 MR. MITCHELL: For twenty plus years I've
15 witnessed her support of the ideals of the California
16 Correctional Facility. For all of her positions, she's
17 brought character, integrity, and determination, and I have
18 every reason to believe that she'll continue with those
19 qualities.
20 CHAIRMAN BURTON: Thank you, sir.
21 Next please.
22 MS. THOMAS: Good afternoon, my name is Chauncet
23 Thomas, and I bring greetings from the great state of Texas
24 and the city of Houston. I'm here to support my mother,
25 Gwendolyn Mitchell, for her confirmation, and I want to

1 briefly share with you the personal side of her that many
2 people may not know, but it's consistent with the
3 professional side of her.
4 Though she never required that we obtain a certain
5 level or place in life, she did require that we do our best.
6 She did that by encouraging us and setting superior examples
7 herself. One example is concerning education, of which she
8 is a great advocate. My mother is a woman of integrity who
9 honors her word. She doesn't judge people based on
10 socioeconomic, cultural background, or appearance, but
11 embraces diversity. To her everyone deserves an
12 opportunity. I never worked for her professionally,
13 however, I know she -- I know how she is from 5:00 p.m.
14 until 9:00 a.m., and I can't imagine her being any different
15 from 9:00 a.m. to 5:00 p.m. I support her very much
16 wholeheartedly 100 percent, and the baby does too. Thank
17 you.
18 (Laughter.)
19 SENATOR JOHNSON: Are there any members of your
20 family who oppose you?
21 (Laughter.)
22 MR. DREGAN: Hello, my name is Richard Dregan, I'm
23 the father of Gwendolyn Mitchell, and I strongly support
24 her. And I think I know her about as well as anyone else in
25 this room, and I definitely feel that -- think that the

1 things that she intend -- and to bring forth to the prison
2 will be of great -- would be a great improvement and a great
3 asset, and it would be a reduction to the taxpayer with all
4 her ideas and her plans of educational accomplishment. And
5 I got a feeling she would do it, if given the opportunity.
6 SENATOR KNIGHT: Mr. Chairman.
7 CHAIRMAN BURTON: Yes.
8 SENATOR KNIGHT: A question to the father.
9 MR. DREGAN: Right.
10 SENATOR KNIGHT: Since you know her so well, and
11 you've probably known her longer than anybody, can you tell
12 me anything that we ought to be aware of?
13 (Laughter.)
14 MR. DREGAN: No. I think that it will all come
15 out in the wash.
16 (Laughter.)
17 SENATOR KNIGHT: Thank you.
18 CHAIRMAN BURTON: Next.
19 MR. KENT: Mr. Chairman and Committee Members,
20 thank you for this opportunity. My name is Stephen Kent,
21 correctional lieutenant at the facility, and I'm the chapter
22 president for the California Correctional Supervisors
23 Organization. Many of the sergeants and lieutenants at our
24 facility, which I represent -- we are in full support of the
25 warden. We respect her for her experience and her sense of

1 fairness. Thank you.

2 CHAIRMAN BURTON: Thank you. Next.

3 MR. SANDERS: Mr. Chairman and Committee Members,
4 my name is Frank Sanders. I'm the chairperson of the San
5 Joaquin Valley chapter of the Association of Correctional
6 Workers, and I'm here in support of Ms. Mitchell's
7 confirmation as warden. She continues to do an outstanding
8 job at the institution and I encourage this committee's
9 support of her confirmation.

10 CHAIRMAN BURTON: Thank you.

11 MR. PETERSON: My name is Charles Peterson, I'm a
12 teacher at the Central California Women's Facility, and I'm
13 also a steward for the California State Employees
14 Association. I'm here to support Ms. Mitchell's
15 confirmation as warden of CCWF.

16 In my capacity as a union steward, I've had more
17 occasions than most of the staff to meet with Ms. Mitchell.
18 She has established regular meetings with CSEA stewards and
19 she has demonstrated her openness to employee concerns. She
20 clearly appreciates the role of the union in helping to
21 promote a good working environment at the institution. She
22 has attempted to address the concerns of the employees there
23 to the best of her ability. CSEA members at CCWF look
24 forward to continuing to work with her to solve problems, to
25 develop a good working environment.

1 CHAIRMAN BURTON: Thank you.

2 MS. YOUNG: Good afternoon, I'm Barbara Young.
3 I'm the local president of CSEA at the Chowchilla Women's
4 Prison. I'm also a teacher there. We are in avid support
5 of Ms. Mitchell, because she's an avid supporter of
6 education. We would look forward to and anticipate all the
7 further planning we're going to do in development of our
8 education department. We have the same goal in that
9 education is what leads to these women not coming back to
10 prison. So we support her completely. Thank you.

11 MR. BABILLA: Good afternoon. My name is Charles
12 Babilla, I'm the Prison Industry Manager. I met Ms.
13 Mitchell since November, and she's very supportive of all
14 the programs, especially Prison Industry's. She has an
15 open-door policy and very supportive of her staff, and she
16 treats everybody with respect and dignity, including
17 inmates. I've seen her in action. She is fair and yet
18 firm. She is honest, she has a lot of integrity, a lot of
19 ethics and values, above all, a faith in God. So I'm in
20 complete support of her.

21 CHAIRMAN BURTON: Next.

22 MR. RIVERA: Good afternoon, my name is Manny
23 Rivera, I'm a director for Phoenix House Foundation. I've
24 been working in this field for quite a number of years,
25 including New York, Texas, and now I've been here in

1 California for the last five years. I've activated several
2 programs here in California and I've had the opportunity to
3 work with many, many wardens. And it's been my impression
4 and my experience in the time that I've known Ms. Mitchell
5 that she is not only a good manager, she also has tremendous
6 people skills. And we've had an opportunity to handle some
7 very, very sensitive issues, and during that time, I've
8 gotten to a point where now not only do I respect her
9 managerial skills, but I also respect her integrity and the
10 way she carries herself. Any questions?
11 MS. MITCHELL: Thank you.
12 CHAIRMAN BURTON: Any witnesses in opposition?
13 Pleasure of the Committee?
14 SENATOR ROMERO: Move it.
15 SENATOR KNIGHT: Move it.
16 CHAIRMAN BURTON: Please call the role.
17 MS. WEBB: Senator Karnette.
18 SENATOR KARNETTE: Aye.
19 MS. WEBB: Karnette Aye. Senator Knight.
20 SENATOR KNIGHT: Aye.
21 MS. WEBB: Knight Aye. Senator Romero.
22 SENATOR ROMERO: Aye.
23 MS. WEBB: Romero Aye. Senator Johnson.
24 SENATOR JOHNSON: Aye.
25 MS. WEBB: Johnson Aye. Senator Burton.

1 CHAIRMAN BURTON: Aye.
2 Congratulations.
3 MS. MITCHELL: Thank you.
4 CHAIRMAN BURTON: Warden, as you leave the
5 capitol, when you find that pool out there, just see if you
6 can walk across the water, okay.
7 (Laughter.)
8 CHAIRMAN BURTON: John Hensley, Member California
9 Gaming Control Commission.
10 Go ahead, sir.
11 MR. HENSLEY: Good afternoon, Mr. Chairman,
12 Members of the Committee. I want to first thank the staff
13 of the Rules Committee and the Chairman and the staff for
14 the professionalism and courtesy that have been afforded to
15 me.
16 I have over 30 years of law enforcement experience
17 at the state and local level, and most importantly, at the
18 federal level. That experience has ranged from working the
19 street on gambling laws at the state level and the federal
20 level in areas such as the Bank Secrecy Act, casino
21 reporting. Additionally, the Customs Service, which I rose
22 to the top of the civil service position in, was the -- was
23 also a regulatory agency, so I do have an extremely large
24 regulatory background.
25 In working during that time period, I had the

1 pleasure and honor of receiving presidential citations from
2 Presidents Reagan, Bush, and then the Presidential Rank
3 Award from President Clinton just before retiring. I feel
4 those qualifications will assist me in chairing the
5 Commission in working closely with tribal leaders, the card
6 club industry, the administration, and Legislature in doing
7 my work.
8 And I look forward to answering questions.
9 CHAIRMAN BURTON: What's the maximum number of
10 gaming machines statewide that the commission's determined
11 are allowed by the compacts on tribal land?
12 MR. HENSLEY: We have not yet arrived at a final
13 number, Mr. Chairman.
14 CHAIRMAN BURTON: Do you have any tentative
15 numbers?
16 MR. HENSLEY: No, we do not. We're working with
17 the tribal leaders now, and we're working in the process to
18 establish that number in the very near future, but we have
19 not done that now. We're currently in meet-and-confer
20 sessions under Section 9 of the compact on some of these
21 very issues, this one included.
22 CHAIRMAN BURTON: How have the licenses for the
23 slots been issued up to now?
24 MR. HENSLEY: Up until this time, they were issued
25 via a private CPA firm from Auburn, California, which was

1 initially employed to issue licenses at the start of the
2 process, after the compacts and before the Commission was
3 actually put into existence.
4 CHAIRMAN BURTON: And what steps do you intend to
5 follow to change how the slot devices and how would you
6 propose to implement the licensing partnerships with the
7 tribes?
8 MR. HENSLEY: Well, the process, we believe, is a
9 process to work in a consultive and close manner with all
10 the tribal leaders. We believe in a methodology that will
11 be borne of conversations and discussions with all tribal
12 leaders, and we hope to come to a resolution on how the
13 process will work, and we're in the throes of doing that at
14 this very time as we're just now gearing up. But we hope to
15 do that very, very soon.
16 CHAIRMAN BURTON: Is the revenue sharing
17 distribution gone out yet?
18 MR. HENSLEY: It has not, Mr. Chairman. It will
19 go out on the 29th of this month.
20 CHAIRMAN BURTON: What's taken so long?
21 MR. HENSLEY: The process involved gaining
22 information from various sources, including the tribes and
23 from the former CPA firm, which we finally served a subpoena
24 to gain that information. We were unable to get that
25 information from the former CPA firm. We have now had the

1 Department of Justice serve a subpoena for that information,
2 so we will have more.
3 But the tribes were cooperative over a period of
4 about two months, and in May we finally got the needed
5 information so we could award money to the tribes based upon
6 the number of machines they have. The law says, over 350
7 machines, you cannot receive funds, and we've had to sort
8 that out, because there were some that had over 350
9 licenses, but had not yet gone into operation, so we had to
10 verify all those things with the tribes. We have now done
11 that.
12 CHAIRMAN BURTON: And you have a CPA that was
13 hired by whom?
14 MR. HENSLEY: He was hired by the tribes with the
15 consent of the State at the start of the process.
16 CHAIRMAN BURTON: And the CPA wouldn't give
17 information?
18 MR. HENSLEY: That's correct.
19 CHAIRMAN BURTON: Why?
20 MR. HENSLEY: He stated that he had
21 confidentiality agreements and could not share that
22 information with the State unless subpoenaed. So we did
23 issue subpoenas.
24 CHAIRMAN BURTON: And he was asking for -- he
25 needed a friendly subpoena or what?

1 MR. HENSLEY: Well, it was a just a subpoena, I'm
2 not sure how friendly it is, but he's being cooperative with
3 us now that the subpoena has been issued.
4 CHAIRMAN BURTON: Yes, I would think so, otherwise
5 you'd have a contempt and he'd end up being in jail, so
6 that's kind of an easy way to cooperate.
7 MR. HENSLEY: That's correct.
8 CHAIRMAN BURTON: All right. So a tribe has more
9 than 350 machines, then they're not eligible to revenue
10 share?
11 MR. HENSLEY: 350 machines in operation.
12 CHAIRMAN BURTON: Yes, okay. So basically, if you
13 have a tribe that was authorized 400, and they either, one,
14 didn't get them or they had 299 operating and they didn't
15 plug in the other hundred, I mean, how do you determine
16 whether it's like a legitimate thing or whether someone
17 could sit and have it both ways?
18 MR. HENSLEY: Well, at the outset we've asked the
19 tribes to self-report and to self-certify. We did ask the
20 Attorney General on two occasions to send agents to the
21 casinos and make a count, which is like a snapshot in time.
22 So although it's not complete information, it did tend to
23 validate what was on the reports, and so it gave us a fairly
24 accurate picture, although incomplete. That coupled with
25 the tribal information gave us the right information.

1 CHAIRMAN BURTON: Senator Johnson.

2 SENATOR JOHNSON: As you heard earlier, I asked
3 the last appointee a series of questions, and I intend to
4 continue to ask these questions. So I'm not picking on you.
5 You did apparently file your Statement of Economic Interest
6 in a timely fashion after receiving this appointment?

7 MR. HENSLEY: Yes, I did. I filed actually two.
8 I just updated with a new one about two weeks ago.

9 SENATOR JOHNSON: Okay. And you're satisfied that
10 those forms are completed to the best of your ability?

11 MR. HENSLEY: Yes, I am.

12 SENATOR JOHNSON: The next question is, I'm going
13 to reverse the order of them just slightly from how I asked
14 them earlier. And that is, did you receive any information,
15 any advice, any counseling from the Governor's office with
16 respect to your legal obligations and what constituted
17 conflict of interest, any what might be characterized as
18 conflict of interest training, or at least a bit of big
19 brotherly advice from the Governor or anyone on the
20 Governor's staff?

21 MR. HENSLEY: I received it from the FPPC. I sat
22 down and went through their training course and watched the
23 videos and read their materials. So I'm pretty --

24 SENATOR JOHNSON: Was that on your own initiation
25 that you contacted the FPPC?

1 MR. HENSLEY: Yes, I did.

2 SENATOR JOHNSON: I see. So I take it that the
3 answer to the question that was posed is no?

4 MR. HENSLEY: That's correct.

5 SENATOR JOHNSON: Thank you. And just finally,
6 and again I'm not picking on you, I'm just going to ask
7 these questions --

8 MR. HENSLEY: Certainly.

9 SENATOR JOHNSON: -- for a while. What is your
10 impression, having filled out the forms, having gone through
11 some training with the Fair Political Practices Commission
12 on the kinds of ethical standards that you should be held
13 to?

14 MR. HENSLEY: I think as an appointee, we should
15 be held at the very highest levels of ethical standards. I
16 think that there should not be a shadow or even a hint of a
17 shadow of conflict among any official at the top of the
18 government chain. For that matter, anybody in the
19 government. I think that there has to be a clear ethical
20 wall or white line, and I've lived in that world for a long
21 time, and so I'm very comfortable with it and I think that
22 should be the standard.

23 SENATOR JOHNSON: Thank you.

24 Thank you, Mr. Chairman.

25 CHAIRMAN BURTON: Senator Romero.

1 SENATOR ROMERO: Can you tell me what steps you're
2 taking towards hiring an executive director, when you
3 anticipate filling that position? And if you could also
4 delineate for the Committee the role that Mr. Traverso is
5 currently playing in the Commission?
6 MR. HENSLEY: I'll be glad to. We have a
7 continuous announcement out for an executive director. We
8 had two or three candidates that we thought would fill the
9 bill and it didn't pan out, primarily on their side. Mr.
10 Traverso was hired as an independent contractor some seven
11 months ago and fulfilled that contract. He is no longer a
12 continuing contractor. We have one special contract for him
13 which was a six-week contract, a small amount of money to
14 set the process for rules or regulation, but not regulation
15 itself. And so he has no role as enacting anything on the
16 Commission.
17 SENATOR ROMERO: Thank you.
18 CHAIRMAN BURTON: Senator Knight.
19 SENATOR KNIGHT: Yes, thank you, Mr. Chairman.
20 The Federal Indian Gaming Control Commission has
21 adopted what is called a Minimum Internal Control Standards,
22 that each of the tribes must follow in operating gambling
23 casinos. What are your thoughts on the National Indian
24 Gaming Control Commission's Minimum Internal Control
25 Standards, and wouldn't it be easier for California

1 regulations if regulations were based on these federal
2 standards?
3 MR. HENSLEY: The answer is yes to both of those,
4 Senator. The National Indian Gaming Commission's standards,
5 the Minimum Internal Control Standards are good. I've read
6 them and we are going to apply those. The compacts call for
7 a mandatory state uniform set of regulations, and we intend
8 to follow and mirror for the most part the national
9 standards. So there is not a new set of rules or
10 reinventing the wheel for tribal governments. I would add
11 that the tribal governments for the most part have already
12 initiated many of those.
13 SENATOR KNIGHT: I'd assume they had, but as far
14 as the Commission is concerned, did you ask the staff to
15 implement those kinds of standards, and is that your plan?
16 MR. HENSLEY: We intend to, because the compact
17 calls for it, but it's to be worked with the association
18 which is a tribal government group described in the
19 compacts, about 125 people, two from each tribe, and then
20 the Attorney General's office and the Commission. And we'll
21 be working jointly on developing those State regulations.
22 SENATOR KNIGHT: Do you have a timeframe as to
23 when that may happen?
24 MR. HENSLEY: We're already gathering the uniform
25 standard operating procedures from most of the tribes. I

1 think we have about 35 now. We're going to go through and
2 look at those, identify those which are similar, and we can
3 just put those in operation. We intend to do it in probably
4 three stages. Those regulations that are deemed to be most
5 needed will be done first, dealing primarily with monetary
6 issues, and we hope to do something by the end of the year,
7 and then we'll phase in the other two parts of the
8 regulations after that.
9 SENATOR KNIGHT: How many in the tribes have the
10 minimum control standards in place, and if they don't, what
11 standards are they using?
12 MR. HENSLEY: All the tribes which presently have
13 casinos open have various degrees of internal control. Some
14 of the manuals are very thin and some are very thick and
15 complete, but all of those which have casinos open right
16 now. There are 47 casinos out of the 61 compacted tribes,
17 and they all have a set of regulations to operate by. Some
18 of them will be made more complete as the process goes
19 through.
20 SENATOR KNIGHT: Thank you.
21 CHAIRMAN BURTON: Senator Karnette.
22 SENATOR KARNETTE: Do you see the ultimate
23 regulations that you envision as complete, will that apply
24 to all the tribes unilaterally, or will each tribe have
25 different regulations, they all have to meet the federal

1 standards, but how do you come to compromise on that?
2 MR. HENSLEY: Well, I think there's a provision to
3 do this with the association, and I'm hopeful that as we
4 develop jointly a uniform set of regulations that are
5 reasonable, all tribes will seek to adopt those. There is
6 an alternate section of the compact under Section 8 where
7 the Commission, if there is conflict, can in fact initiate
8 regulations through the normal regulatory process. So we
9 feel confident that we can put regulations in place and
10 after all the goal is to keep California gambling above
11 reproach and keep corruption out of the state of California,
12 which I think serves both tribal governments and I know they
13 have expressed this, and the state of California.
14 SENATOR KARNETTE: So if you don't come to a
15 consensus, you do have an approach, who will enforce it if
16 you can't come to consensus.
17 MR. HENSLEY: Well, I think that the Commission,
18 the Gambling Control Commission, has to initiate the Section
19 8 action of actually going forward and moving on regulation
20 independently. But it would only be after -- it would be an
21 impossible goal to reach and I optimistically think that we
22 can do regulations. Everybody that I've talked to seems to
23 indicate this is not a big problem.
24 CHAIRMAN BURTON: When the payments go out to the
25 non-gaming, is it going to go out equal shares, pro rata

1 shares, or you know?

2 MR. HENSLEY: Mr. Chairman, the first iteration of
3 the payments is equal, and it's based on a hundred thousand
4 dollars per quarter. Some tribes are getting two quarters
5 because their machines went in operation in the third
6 quarter, so they're receiving $200,000, and there's a few
7 tribes in that category. The rest are receiving $300,000,
8 which is $100,000 per quarter.

9 The issue of equal versus pro rata is a thorny one
10 for us, and we issued these payments based on equal because
11 it was expedient, because we had no staff, and it also falls
12 under -- even under a pro rata distribution of what would be
13 an annual ceiling of the $1.1 million. So we feel we were
14 in fairly good shape to do it that way.

15 Pro rata is a thorny issue for us. We took
16 testimony at three separate Commission meetings from tribal
17 leaders and tribal associations. We also looked at the
18 original language of the compacts and the accompanying
19 letters issued by the negotiators. And also the current
20 language out of the Coyote Valley decision, which tends to
21 indicate a support for pro rata, which is not pro rata by
22 member or by tribe, but rather than by machine. And so
23 we're continuing to look at it and will be persuaded
24 possibly to change that, but that's how we came to the
25 decision.

1 CHAIRMAN BURTON: A cap to give out to non-gaming
2 tribes in total is a million one, or no more than a million
3 one to a tribe?
4 MR. HENSLEY: Yes, it's 1.1 million per tribe
5 that's eligible.
6 CHAIRMAN BURTON: And how many tribes that have
7 chosen to go not gaming are there?
8 MR. HENSLEY: There are 61 compacts, that would
9 leave about 49 tribes which have chosen not to sign compacts
10 or go into gaming.
11 CHAIRMAN BURTON: And then they would in theory
12 when things get going receive a million one?
13 MR. HENSLEY: Yes. And there are some tribes
14 which have signed compacts but have not yet chosen to
15 initiate gaming. So the actual number right now that are
16 eligible for some form of payment is around 82, counting
17 those that are under 350, plus those that are not compacted
18 tribes.
19 CHAIRMAN BURTON: So what was the purpose of, for
20 want of a better word, revenue sharing? I thought in my
21 ignorance that was to go to the tribes that chose to be
22 nongaming tribes, as opposed to a tribe that chose to be a
23 gaming tribe but held up sending in their application or
24 something for a while?
25 MR. HENSLEY: I believe -- as I understand it -- I

1 was not there at the initial compact negotiations that
2 initially started between gaming and non-gaming and the
3 terminology was changed and the definition was changed
4 during the compact negotiation. That is some support for
5 the pro rata approach, because as the language said and the
6 negotiations said, it did not want people dipping out of
7 both pots. And so if we looked at pro rata, it was to
8 reduce the amount to those tribes. The more machines they
9 had, the less money they get.
10 CHAIRMAN BURTON: So if Tribe A has 250 machines,
11 Tribe B, because of where they're located or whatever,
12 chooses not to be involved in gaming, they would both get a
13 million one?
14 MR. HENSLEY: Yes.
15 CHAIRMAN BURTON: Well, that's makes no sense.
16 MR. HENSLEY: I agree with you, but that's exactly
17 what it says. The million one is a pretty absolute number.
18 The pro rata up until that point I think you can justify.
19 CHAIRMAN BURTON: Why would not every tribe in the
20 world decide to go for -- you know, go up to get right up to
21 wherever the magic number is and go for the slots and figure
22 out they get a million one and the rest is ice cream?
23 MR. HENSLEY: That's a very distinct possibility
24 that could happen and may have happened.
25 CHAIRMAN BURTON: That shows you what happens when

1 the State negotiates with five minutes to midnight. For all
2 you know somebody might end up with two casinos, right?
3 What are you laughing at Mark? Nothing, huh?
4 Okay. Witnesses in support.
5 MR. HUNT: My name is Ted Hunt. I'm representing
6 the Los Angeles Police Protective League and the Association
7 for Los Angeles Deputy Sheriffs, which comprise about 15
8 percent of all police and sheriffs in this state. We
9 believe that John Hensley is highly qualified and his
10 experience is tailored to this position so that he will help
11 to prevent problems in the gaming industry. And in the
12 interest of time, we would also like to add our support to
13 J. K. Sasaki and Arlo Smith, the father of a good friend of
14 mine.
15 CHAIRMAN BURTON: Okay. Are you stiffing Michael
16 Palmer?
17 (Laughter.)
18 MR. HUNT: No, sir. I just don't know him.
19 CHAIRMAN BURTON: Okay.
20 MR. YARYAN: Tim Yaryan, representing the
21 Association for Los Angeles Deputy Sheriffs. I'll reiterate
22 what Mr. Hunt said. I was up in Appropriations, and we
23 would support all the members of the Commission, but
24 particularly Mr. Hensley. He's had a distinguished career
25 in law enforcement and is eminently qualified, a fair man, a

1 good man, we urge your support.

2 CHAIRMAN BURTON: Next witness.

3 MR. LAWSON: My name is Chairman Alan Lawson, I'm
4 the proud chairman of the San Pasqual band of Mission
5 Indians in San Diego County, and we strongly support the
6 Commission and Mr. John Hensley. We have worked with him
7 for quite a number of months now, and we have learned to
8 realize that he is a man of his word, he is a man that wants
9 to work with us, and we strongly support him and his
10 commission.

11 CHAIRMAN BURTON: Yes, sir.

12 MR. CURRIER: Hi, I'm John Currier, Chairman of
13 the Rincon San Luiseno Band of Mission Indians. As a tribal
14 chairman representing my band, we are here to support the
15 confirmation of John Hensley, Arlo Smith, J. K. Sasaki, and
16 Michael Palmer to serve on the Gambling Control Commission.

17 On September 10th, 1999, the Rincon Band had no
18 slot machines, and on May 15, 2000, the Rincon Band put out
19 loan monies in the amount of $2,622,250 to Sides Accountancy
20 Incorporated, plus their fees of $5 per license. This
21 amount was to purchase 1,650 licenses so that the Rincon
22 Band could implement a total of 2,000 gaming devices. On
23 May 15th, 2001, the Rincon Band put into play its 2000
24 machines. Today we're approximately one year away from
25 implementing the final phase of a hundred and twenty five

1 million development.

2 Still today the Rincon Band doesn't have licenses
3 that the State has agreed are licenses. The Rincon Band
4 needs a body that it can work with for the purposes of
5 having security that its licenses are valid or that they are
6 validated.

7 As one of the four tribal leaders who were voted
8 amongst the tribes to be on the front lines of the
9 negotiations, I truly do have firsthand knowledge as to what
10 difficulty lies ahead of those who serve on this commission.
11 This commission will be charged with weeding through
12 language that is extremely ambiguous. They will have to do
13 the best they can to understand the intent of language that
14 when interpreted one way may have a very negative or
15 causative effect on another tribe or other tribes.

16 The board members of this commission, and
17 especially the chairman of this commission has their work
18 cut out for them. With the negotiations that will come in
19 approximately a year and a half, it is important to get this
20 commission confirmed and on its way. Many tribes will have
21 difficulty finding investors until many of the issues that
22 lie unanswered are resolved, as well as tribes that have
23 investors need security with the process and a body that
24 they can work with.

25 The Rincon Band believes that this commission, and

1 especially John Hensley as the Chairman and leader of this
2 commission will do a fine job to implement the compact as
3 was intended. We believe that John Hensley and this
4 commission are up to speed and have the momentum going, and
5 not to confirm them now would only delay the Tribal/State
6 compact from being implemented. This could affect the
7 tribes who would like to see their revenue sharing continue,
8 as well as tribes who have to implement their gaming
9 operations.
10 Over the course of time there will be differences
11 as to the Commission's positions on various issues. But we,
12 the tribes, have the meet-and-confer process, dispute
13 resolution, and court if need be to flush out the
14 ambiguities of the compact and its intentions. Having said
15 the above, the Rincon Band again asks this body to once and
16 for all confirm the Commission so we can fully appreciate
17 our rights to the Tribal/State compact.
18 I thank you for your consideration, and based upon
19 the questions that you all asked earlier of Mr. Hensley, I
20 think you understand when I talk about ambiguities, et
21 cetera, et cetera. Because there certainly are issues with
22 the compact, and whoever you put into this position is going
23 to have a very difficult time.
24 We have personally talked to Mr. Hensley, we've
25 met with many tribes that met with Mr. Hensley. He's been

1 very up front, very forward with us, and understanding. He
2 appears, as well as this commission, to want to work these
3 issues out in the best interest of all. As a matter of
4 fact, on the Rincon project we have today, we have about 60
5 to 70 percent unions working on our project, I just thought
6 you might want to know that, Mr. Burton.
7 MR. BROKAW: Mr. Chairman and Members, Barry
8 Brokaw on behalf of the Agua Caliente Band of Puela Indians
9 here to support the confirmation proceeding for Chairman
10 Hensley, and also Commissioner Palmer. The fact that we
11 haven't written a letter in support of Commissioner Smith or
12 Sasaki indicates no dissatisfaction with those members, we
13 just haven't had the opportunity to work with them one-on-
14 one thus far.
15 Mr. Hensley, in particular, has given us great
16 leadership, he's been very direct and straightforward and
17 open with us. We've engaged in several discussions with him
18 and are very pleased with how he's administering the
19 compacts, and we urge your serious consideration and support
20 of his and the Commission's confirmation. Thank you.
21 CHAIRMAN BURTON: Have you found Chairman
22 Milanovich very open, straightforward, and succinct?
23 MR. BROKAW: He's a man of immense knowledge and
24 few words.
25 MR. BLONIEN: Thank you, Mr. Chairman and Members,

1 Rod Blonien representing the California Commerce Club in
2 support of Mr. Hensley as Chairman, Mr. Smith as a Member,
3 Mr. Palmer as a Member, and Ms. Sasaki as a Member of the
4 Gaming Commission. As I think many of you know, the
5 Gambling Control Act cleared this house in 1997. In '98
6 Governor Wilson had the opportunity to appoint to the board
7 and he didn't, and Governor Davis came in and he had the
8 opportunity to appoint a commission in 1999, but he didn't
9 until late last year.
10 We are very happy with the appointments that have
11 been made. As you may know, each member represents a
12 specific discipline in terms of rounding out the board, and
13 we think that each member is highly qualified and brings
14 unique qualities and attributes to the Commission, and we
15 say -- we'd like to see them all confirmed and, again, we
16 believe that they are people of high capability and high
17 integrity.
18 CHAIRMAN BURTON: What's your jurisdiction over
19 card clubs?
20 MR. BLONIEN: They have the -- they act -- the
21 Division of Gambling Control in the A.G.'s office acts as
22 sort of the police force. The Commission acts as a quasi-
23 judicial administrative body that's responsible both for the
24 issuance of licenses and permits. They also have the
25 ability, of course, to pull those permits and pull those

1 licenses.

2 CHAIRMAN BURTON: They do?

3 MR. BLONIEN: Yes, they do.

4 CHAIRMAN BURTON: And is that the same with the

5 tribes, or you totally control the tribes?

6 MR. HENSLEY: No, it's the --

7 CHAIRMAN BURTON: Is it the same process?

8 MR. HENSLEY: The same division between the

9 Attorney General's office and the Commission exists on the

10 compact side, however, our regulation authority is much

11 narrower on the compact side than it is on the card club

12 side.

13 CHAIRMAN BURTON: Well, I think there's been a

14 concern over the duality of responsibility with some of the

15 tribes, I think, between you and the A.G.'s office about --

16 I don't know whether -- you know, who's allowed to have

17 slots, how many slots. I know one of the problems they've

18 had is they were kind of getting missed. And I mean, did

19 you have more authority than the A.G.'s office over this or

20 how the hell does it work?

21 MR. HENSLEY: What we did, Mr. Chairman, was

22 initiate an interagency agreement to define those issues. I

23 think it was more external than it was internal. We have a

24 good relationship with the Attorney General's office, and as

25 Mr. Blonien said, they function more as a police agency and

1 we function more as the regulatory licensing, quasi-judicial
2 group. So there's a pretty clear definition of the
3 difference. But so that everyone had the same program to
4 play from, we did an interagency agreement that defines
5 those terms and we do have a good relationship.
6 CHAIRMAN BURTON: All right.
7 MR. LATIMER: Mr. Chairman and Members, John
8 Latimer on behalf of the Picayune Rancheria of Chachance
9 Indians and the Buena Vista Rancheria of Miwok Indians. In
10 the interest of time, I'll associate myself with the
11 comments made by a number of the previous presenters. Just
12 to add to what was said, our two tribal counsels have had
13 extensive dealings with these four commissioners and again
14 found them all to be honorable, straightforward, open, and
15 accessible people and we look forward to their confirmation
16 and urge your support.
17 CHAIRMAN BURTON: All right. Thank you. Also not
18 present, but we have communications from Corona, Sherwood
19 Valley, Santa Rosa, Jackson, and Mituca, in support of the
20 nominee.
21 Witnesses in opposition.
22 Good afternoon, Mark.
23 MR. MACARRO: Good afternoon, Mr. Chairman and
24 Members of the Committee, I am Mark Macarro. I am the
25 Tribal Chairman for the Pechanga Band of Luisano Mission

1 Indians in Temecula, Riverside County, California, and I
2 represent 1,500 men, women, children, elders, of my
3 community. They elected me to articulate their interests.
4 I would say those interests include an assessment that
5 basically is too many questions and too little time in
6 office.
7 We've got a situation here where we are very
8 concerned and we are adamantly opposed to the confirmation
9 of Mr. Hensley. We think that despite some of the things
10 you've heard today which -- or many of the things that we
11 have heard as tribal leaders over the last year, that
12 actions speak louder than words. And the issue that we have
13 here, the problems we have with the candidate includes
14 representations that this is how it's going to be, and then
15 no follow through, or the actual reverse taking place time
16 and again.
17 We've concluded that we have -- we are looking at
18 a disrespect of the government, government relationship
19 that's been established through this compacting and Indian
20 gaming issue, over the last three years in particular, and I
21 think that Mr. Hensley and former Interim Director Traverso
22 are singlehandedly responsible for the train wreck, as I can
23 characterize it, of governmental relations between tribes
24 and states right now, and for divisiveness that exists right
25 now.

1 In a meeting with tribal organization, Mr. Hensley
2 characterized the tribal situation here in California as one
3 of having to deal with the emerging tribes, some of whom
4 we've heard from here, and hardliner tribes, and I think a
5 vague reference to have-not tribes. And that kind of
6 mindset and divisiveness is not healthy or productive to the
7 job that we need to do between governments here in
8 California. I think that we need as the Chairman of the
9 Commission here, an individual who is a consensus builder.
10 While the rest of the state may need a czar for
11 gambling, and certainly Senate Bill 8, the Bill Lockyer bill
12 probably calls for a czar, the role for -- with regard to
13 Indian gaming and compacts is not only much narrower than
14 that as was characterized a few minutes ago, but it is
15 rather ministerial. It's a role that is a trustee for a
16 trust fund, and that's essentially it. It is -- all those
17 other czar type duties, that's all relevant to nonIndian
18 gaming.
19 Yet for the better part of this past year, we've
20 had to deal time and again -- I think an example of this
21 would be a reference you already heard to commissions, the
22 activities of the commission where testimony was received by
23 tribal leaders. That's not the kind of forum that tribal
24 leaders should be participating in per se. You've got
25 members of the Commission on their dias elevated from the

1 role -- or the tribes are providing that date -- receiving
2 testimony on behalf of the State, issues that should be
3 worked out in other forums, that is not one of the kinds of
4 things.
5 We need a consensus builder in this position, and
6 I think that with regard to the rest of the Commission, we
7 can stand with the other tribes, Commission Sasaki, Smith,
8 and Palmer, we have no quarrel with them. Nor do we have
9 any quarrel with the role of the Commission in the scheme of
10 things. Absolutely necessary, agreed to, big concession, I
11 think, by the tribes in the development of the compacts, and
12 it's there. But the personality is something that is making
13 it very difficult to achieve what I believe we were supposed
14 to be working toward in this compact.
15 CHAIRMAN BURTON: Well, I mean, just because they
16 hold a public hearing and take testimony, I mean how else
17 would you get information? I don't know, maybe the Chairman
18 of the Commission knows, but I imagine that before they do
19 stuff they have to take public testimony. I mean, do you or
20 don't you, I don't know?
21 MR. HENSLEY: We do, Mr. Chairman. We've also had
22 regional meetings that are informal.
23 CHAIRMAN BURTON: Well, leave the informal
24 meetings aside for a minute, but, I mean, is under the
25 statutory obligation, I mean, you're required before you do

1 something to hold public hearings and take public testimony?
2 MR. HENSLEY: Absolutely. A commission by law is
3 required to hold a public hearing and take their actions in
4 public.
5 CHAIRMAN BURTON: All right. So your concern,
6 Chairman Macarro, is -- and I'm trying to get a fix, because
7 this is -- well, it's not the first time that I've seen a
8 split, you know, in the tribal community, but the only
9 opposition that we've gotten has been from -- at least that
10 I know of, has been from your tribe. Is it he's been
11 disrespectful because he defined that there would be a
12 merging tribes, which there are, there would be -- okay, I
13 thought that's what I heard where the tribes that were
14 already in business, like you, then hardline tribes and
15 whatever, and I've always considered the hardest of hard
16 lines myself, but I'd like you to really explain because I'm
17 having trouble seeing what the problem, you know, either
18 perceptionally or actually is with the way that, you know,
19 that you feel that you and the tribes have been developing a
20 platform in this regard.
21 MR. MACARRO: I think in particular, Mr. Hensley's
22 created an atmosphere of distrust by telling tribes
23 essentially what they want to hear. I think there's a group
24 of tribes that are basically here because they've heard
25 those very things. That's exactly what I'm talking about.

1 Let me give you an example though.

2 CHAIRMAN BURTON: All right. Just so that this

3 helps. Like you say to me, what we want to do is get, you

4 know, blah, blah, blah, blah, blah, and I say to you

5 absolutely yes and then it never happens, is that?

6 MR. MACARRO: Kind of, yeah. There were promises

7 made to tribes at a meeting on May 7th, and then those

8 promises were broken within a week or less. One of those

9 was to stop beating up on tribes for not caring about

10 regulation. Yet, I think it was -- well, certainly within

11 less than a week Mr. Traverso was out there talking bad

12 about tribes and their lack of consideration for regulation.

13 Broken promise.

14 CHAIRMAN BURTON: Publicly in the press or out --

15 MR. MACARRO: Yes, yes.

16 CHAIRMAN BURTON: Okay.

17 MR. MACARRO: And, in fact, even more than that

18 was that there was a characterization, actually a promise,

19 that Mr. Traverso would not be speaking to the press

20 anymore, and yet he did subsequent to that promise.

21 I think even more germane to the substance of the

22 compacts, you've heard about these May 15 deadlines, and

23 basically what it is is a one-year deadline from the time

24 that a tribe acquires the compacts or licenses to operate

25 machines, I should say, they have one year to put them in

1 operation. You know, when the compacts were negotiated, we
2 conjured up this whole idea, this concept of a draft and it
3 was tweaked and tweaked and finally both sides agreeing, the
4 Governor, and our understanding was hey, the tribes are
5 going to administer this.
6 And all this subpoena business, I don't really
7 know where that comes from, because the Sides Accountancy
8 Corporation that's referenced and the subject of the
9 subpoena is they have that mandate to do that. Each tribe
10 negotiated a trustee agreement with each of those, and
11 that's why information could not be obtained from the
12 accountant firm, because they were a trustee and they had an
13 obligation to us who put that agreement in effect and I mean
14 as an individual government to not divulge those things.
15 But --
16 CHAIRMAN BURTON: Can I ask a question?
17 MR. MACARRO: Sure.
18 CHAIRMAN BURTON: Well, if the Commission has to
19 know how many machines you've got in order to give you the
20 nongaming money, if they can't get that, how the hell are
21 they going to get the information if they don't get the --
22 how could they give out the money if they don't get the
23 information?
24 MR. MACARRO: The answer to that is very
25 practical, and the timing of that was that all they had to

1 do was ask the Division of Gambling Control at the A.G.'s
2 office. They had current and up-to-date numbers at that
3 time, and that's where what we regarded as a duplication of
4 roles and duties first came up, was they were asking for
5 information that was already obtained and sitting from our
6 perspective with the State.
7 CHAIRMAN BURTON: Well?
8 MR. HENSLEY: I'd just say, Mr. Chairman, the
9 information was incomplete, I sat with Harlan Goodson, he
10 gave us everything he had, that was not complete information
11 for us to do our job. That's why we had to ask for more
12 information.
13 CHAIRMAN BURTON: How would you know it wasn't
14 complete?
15 MR. HENSLEY: We took the data that he had and
16 processed it against all the tribes and there were holes in
17 a lot of the information, it was not readily available, he
18 didn't have it.
19 CHAIRMAN BURTON: So I mean Pechanga Tribe's got
20 200 slot machines, I mean, what -- so you took the word, you
21 didn't take the word, or what?
22 MR. HENSLEY: No, when we first asked for the
23 information from Mr. Sides, we did not get anything. And so
24 what we did was --
25 CHAIRMAN BURTON: Well, why didn't you just go to

1 the A.G. first where there's a repository?

2 MR. HENSLEY: Well, the first place we went we

3 figured was to go to the man who had all the information,

4 which is Mr. Sides. We then went to the A.G.

5 CHAIRMAN BURTON: No, but I mean, he works for

6 them?

7 MR. HENSLEY: Yes.

8 CHAIRMAN BURTON: So why would he go to the guy

9 who works either for you or with you?

10 MR. HENSLEY: We asked the A.G. to gather the

11 information for us and he went out and made counts for us,

12 but that was incomplete.

13 CHAIRMAN BURTON: Well, I'm trying to figure out

14 the problem here and why did you not think to go to the A.G.

15 in person? It's not like a life or death question, it's out

16 of idle curiosity.

17 MR. HENSLEY: No. I think they were done in a

18 very short period of time. We -- it was our figuring. I

19 would say ours is a group of about five people. We had a

20 very small, small staff, and so we felt that since the

21 letters issued to Mr. Sides said he would report to the

22 State that he would have that information. He told us he

23 would give it to us, said he wouldn't later, and so we

24 turned to the Attorney General's office and asked them to

25 gather the information.

1 CHAIRMAN BURTON: According to Chairman Macarro,
2 somebody gave the information to the A.G. At the time that
3 you were looking for the information, they had information.
4 Was it the information, I don't know, but they had
5 information.
6 MR. HENSLEY: They did not have all the
7 information we needed. They had incomplete information.
8 CHAIRMAN BURTON: You didn't know that until you
9 asked them?
10 MR. HENSLEY: That's correct.
11 CHAIRMAN BURTON: And you didn't ask them until
12 after you asked Sides, right?
13 MR. HENSLEY: That's correct.
14 CHAIRMAN BURTON: Well, wouldn't it have been more
15 relevant if you went to the A.G. first and you said, well,
16 Jesus, this looks like it's a little bit unclear, and you
17 get into a discussion with the A.G., and as long as they
18 were the repository of the first reporting thing, you know,
19 we might -- we may or may not be sitting here anyway. But
20 then the A.G. goes to the CPA and said, look, we need more
21 of this information. I mean, that doesn't seem like the
22 reason for the big brouhaha, but I mean -- you know, I mean,
23 hindsight's a very cruel thing. That's one thing. But what
24 besides that?
25 MR. MACARRO: As far as issues?

1 CHAIRMAN BURTON: Well, yes.
2 MR. MACARRO: I think one of the biggest issues
3 that has unfolded over this past year was the May 15
4 deadline issue. Prior to one year to put those machine
5 licenses into play, and if they didn't, they would have to
6 repay to put -- to reacquire the same number of licenses for
7 yet another year. The money --
8 CHAIRMAN BURTON: Repay how much?
9 MR. MACARRO: How ever much they paid initially?
10 CHAIRMAN BURTON: How much?
11 MR. MACARRO: I can't remember. I'm drawing a
12 blank. $1,250 per license.
13 CHAIRMAN BURTON: Per machine?
14 MR. MACARRO: Per machine.
15 CHAIRMAN BURTON: Well, as I understand -- just
16 let me ask this question, I want to get this. I was told by
17 some of the tribes who were supporting you that your
18 position, that you have told them -- let me get this on the
19 record. That if they made a good effort towards being
20 operational or having the machines by that date, is that
21 that was not going to be a firm date, you know, I mean, if
22 it just sat in their hands and did nothing. But if it was
23 like they did the best they could do and for whatever reason
24 they didn't do it, that they were not going to be cut off
25 from that date, is that?

1 MR. HENSLEY: That's true.
2 CHAIRMAN BURTON: So that is true?
3 MR. MACARRO: And see the problem with that is
4 that that's essentially a negotiation or renegotiation of
5 the wordage of the compact because that money that would
6 have to be repaid by those tribes --
7 CHAIRMAN BURTON: He says they wouldn't have to
8 repay it.
9 MR. MACARRO: The language of the compact
10 requires, the actual compact. Never -- it doesn't mind what
11 the candidate for -- the chairman of the Commission says,
12 I'm saying the compact language says that if you don't put
13 those into play, then you got to pay again. And that's
14 where the nongaming tribes money comes from. So any
15 decision that says you don't have to pay --
16 CHAIRMAN BURTON: Well, I think the nongaming
17 tribes' money comes from all those hundred dollar bills I
18 see put in the slots at the casinos, I mean, not so much
19 this stuff.
20 MR. MACARRO: That's the beginning of the food
21 chain right there.
22 CHAIRMAN BURTON: Well, but I understand that.
23 But I mean, I would think -- I mean to me, here is one
24 argument -- and I'm trying to understand it. One argument
25 is that you have the May 15th deadline and then they've got

1 to start over and they've got to pay more money, and that's
2 not right. And the other thing is that being flexible in
3 saying that if you made your best effort and through no
4 fault of your own you haven't made the May 15th deadline,
5 we're going to allow you to proceed. And then to say but
6 then that takes money out of the deal, I mean --
7 MR. MACARRO: No, that's precisely the
8 consequence.
9 CHAIRMAN BURTON: Well, I know the consequence,
10 but I mean you're just -- you're acting like you're going to
11 be upset with him on the May 15th thing if they held people
12 to it.
13 MR. MACARRO: We wanted him to -- actually, we
14 wanted him to not have a say in the May 15th deal. That's a
15 usurpation by the way of a role that I think belonged to the
16 tribes.
17 CHAIRMAN BURTON: If you've got a tribe that's on
18 the way to getting their slots and through no fault of their
19 own there's a strike at the slot machine factory in Jersey
20 or something, they don't get their slots, and so this guy,
21 usurpation or not, is willing to say, you know, you've got
22 an extension because it was through no fault of your own
23 that you didn't make it, or would you rather say, hey, you
24 know, tough cookies and you have to start over again. I
25 would think you would be more -- even if you don't like what

1 he's doing or the fact that he doesn't do it, that the
2 tribes are getting a shot because they got screwed by
3 something that wasn't their fault.
4 MR. MACARRO: Well, in many cases a lot of those
5 issues were part of the tribes control. It had to do with a
6 third party, largely their investors. The money -- the fact
7 is that the money for the nongaming tribes in the revenue
8 sharing trust fund comes from the payment of those license
9 fees.
10 CHAIRMAN BURTON: It doesn't come from the profits
11 of the casino?
12 MR. MACARRO: Well, obviously, we have to open our
13 doors, people have to come in and put dollars in our
14 machines, and then we have to turn around and pay for
15 licenses. Those dollars paid for the license for each
16 machine, or they accumulate and in the aggregate become the
17 revenue sharing trust fund. That's where the nongaming
18 tribes get their moneys. So any hold up on this end saying
19 hey tribes you have a ten-month extension, is a ten-month
20 hold up on the nongaming tribes getting their dollars, and
21 that's been one of the major problems that we've had over
22 the last year.
23 CHAIRMAN BURTON: So the tribes get no money out
24 of the profits of the big casinos?
25 MR. MACARRO: As long as the tribes that have

1 licenses in their hand don't have to repay it, that one-year
2 deadline.
3 CHAIRMAN BURTON: In other words like, I've been
4 in the casinos since the slots, I haven't visited yours yet,
5 but they're doing pretty good, at least they're going, you
6 know, with hundred dollar slots, which I never saw before.
7 MR. MACARRO: Oh, where'd you go?
8 CHAIRMAN BURTON: Where else, Richmond. Anyway --
9 and a couple others. But basically, that none of that
10 profit or proceeds go into the trust fund for nongaming,
11 it's only the license renewal money?
12 MR. MACARRO: Right.
13 CHAIRMAN BURTON: All right.
14 MR. MACARRO: Or the initial license acquisition.
15 CHAIRMAN BURTON: The license acquisition. Your
16 concern, because I'm trying to understand Mark. You're
17 concerned with what he's doing is by granting an extension,
18 whatever, is that that will be costing renewal money or
19 something else because you pay a license fee every year.
20 MR. MACARRO: Yes.
21 CHAIRMAN BURTON: Okay. So basically they would
22 have paid the license this year and then they'd be paying a
23 license next year, and because he's renewing it, it probably
24 -- the next year's license gets shoved forward?
25 MR. MACARRO: Or saying if you don't have to pay

it, you know.

CHAIRMAN BURTON: Don't have to pay a new license on machines you ain't got?

MR. MACARRO: That's money that's not going into the kitty for the nongaming tribes.

CHAIRMAN BURTON: Not paying on slots you ain't got?

MR. MACARRO: Well, right. You've got -- right. I guess the problem on that side is you've paid for a license but you don't have a slot to put into operation, because you don't have a building or you have some environmental issues or whatever, it hasn't been put in a row yet for you to open up.

CHAIRMAN BURTON: Well, then is it right that they have to pay for the slots? Here's the question I have about this. Is it right that they have to pay for the -- they have to buy a license for something that they haven't got and may not get, because whether it's environmental -- I'm asking from the State's standpoint.

MR. HENSLEY: Well, we believe that the license process is set in stone in the compact. It's $1,250 for the initial license, then it's a quarterly payment for those machines in operation.

CHAIRMAN BURTON: A quarterly payment of?

MR. HENSLEY: Of a certain amount based on the

1 number of machines, so it's a sliding scale.

2 CHAIRMAN BURTON: Based on the machines, not based

3 on the rendering from each machine?

4 MR. HENSLEY: That's correct, it's a flat fee.

5 There's a second fund, Mr. Chairman.

6 CHAIRMAN BURTON: Well, I -- go ahead.

7 MR. HENSLEY: Which is based upon the average

8 daily net win of a certain number of machines, which were

9 those machines in operation in September of '99, and that

10 money will go to the Legislature for mitigation and offset

11 purposes. That doesn't start for another year and a half.

12 CHAIRMAN BURTON: The machines in September 1999?

13 MR. HENSLEY: Yes. There were 19,000 machines --

14 CHAIRMAN BURTON: Was that bogus machines or the

15 real slot machines?

16 MR. HENSLEY: Yeah, it was the number of machines.

17 It's the old machines.

18 CHAIRMAN BURTON: Actually before the compact?

19 MR. HENSLEY: It's the old machines. Yes, pre-

20 compact machines.

21 CHAIRMAN BURTON: Okay.

22 MR. MACARRO: I think this is such a core issue

23 here to what the problems have been. I think that this

24 willingness to use tribal issues and pit nongaming tribes

25 and us so-called hardliner tribes against each other by

1 holding up the disbursement of monies for which we see no
2 excuse and no interpretation, we think it's one of the brief
3 moments of absolute clarity in the compact, that on a
4 quarterly basis everything that's in the trust fund should
5 be distributed. Yet, here a year later, the Commission is
6 yet to distribute everything that's in there. And that has
7 been under the helm and leadership and direction of the
8 current interim chairman.
9 One of the big problems we have is this
10 interpretation, willingness to interpret unilaterally on
11 behalf of the State otherwise language that is in that
12 compact. And I think that it's something that really needs
13 to have you folks, Members of the Committee, raising
14 questions and asking why is it or how is it that this one
15 agency of this state can have such a strong role in
16 interpreting the language of basically a government-to-
17 government treaty.
18 Now, if this is allowed to stand, I think that
19 truly the last three, four years of groundwork, state to
20 state -- or State to Tribal Nation relationships will begin
21 to erode. That's already forced us to invoke Section 9, a
22 dispute resolution clause that's in the compact, which is
23 really the proper arena for which interpretations should be
24 made.
25 SENATOR KARNETTE: I have a question. I have a

1 question.

2 SENATOR JOHNSON: Senator Karnette.

3 SENATOR KARNETTE: When you talk about dispute

4 resolutions, so if this goes the way you feel it should,

5 will it prevent the tribes from getting your money? I mean

6 the money will not be distributed, will it, if it goes to

7 court?

8 MR. MACARRO: No. No.

9 SENATOR KARNETTE: It will be distributed?

10 MR. MACARRO: It will be distributed. In fact,

11 the Commission has the power right now to go ahead and

12 distribute, and I'm saying they should have been

13 distributing from the end of the first quarter.

14 SENATOR KARNETTE: But if they disagree for

15 whatever reason, couldn't this interrupt the distribution

16 for even a longer period of time?

17 MR. MACARRO: No, you've asked -- if this goes the

18 way that I would like to see it go and that would be that

19 Mr. Hensley doesn't get confirmed, there's still three

20 members of the Commission that are active, that's a quorum

21 of the Commission. They can still engage in duties.

22 SENATOR KARNETTE: But you're not sure they would

23 do that, are you?

24 MR. MACARRO: I feel pretty confident that they

25 will. I feel eventually that even under the chairmanship of

1 Mr. Hensley that they would get to disbursing most
2 everything that's in that trust fund. But why there even
3 has to be over a year's waiting time is beyond me, when the
4 language of the compact is pretty clear on how that money
5 does get distributed and when.
6 SENATOR KARNETTE: I understand your concern. I
7 sit on a governmental organization and I've been involved,
8 not like Mr. Burton, but I've heard this from the very
9 beginning and it's a very, very complicated issue. It's
10 something we've never done before, it's new for the State,
11 and it's new for us. And knowing what happens in all other
12 agencies and groups, there's always problems and coming to
13 consensus is very, very difficult, and I'm sure we make a
14 lot of mistakes along the way.
15 But I can't see -- I mean I'm not sure exactly
16 what should have been done. You wanted the money
17 distributed, but maybe others, if that had happened, maybe
18 there would have been other conflicts. Now, you can tell me
19 what that says all you want, I'm not a lawyer, I'm
20 interested in fairness. I'm a teacher first, last, and
21 always, and when my lawyer friends tell me that you can't do
22 this, I say laws are made for people, not people for laws,
23 and I really feel like there are times when you have to use
24 some common sense. I don't know that I could resolve this,
25 but it's something that takes -- it has to be resolved

1 sooner or later, and I don't want anybody to suffer, but I
2 want it to be fair, and I can't see how not confirming Mr.
3 Hensley when really he wasn't the one. Wasn't it the CEO
4 who was making these decisions?
5 MR. MACARRO: The CEO, the interim executive
6 director?
7 SENATOR KARNETTE: Yes, wasn't he making the
8 decisions?
9 MR. MACARRO: I don't know. I've heard him say he
10 was kind of a rogue element in there, but even that's a
11 problem, because if you don't have control of your staff.
12 SENATOR KARNETTE: But human nature is human
13 nature, and part of human nature in the democratic process,
14 and this has always happened, and ultimately we have to come
15 to some kind of resolution. And I want a resolution to come
16 about, I want it to be as fair to everybody as possible, but
17 I think we're in a learning curve here and I just can't see
18 how holding up this confirmation is going to solve anything.
19 But I think he's probably learning something from it and
20 would hope all the others would too. And I don't know what
21 the answer is, but it's not going to prevent me for voting
22 for his confirmation, not because you're not right, maybe,
23 but I don't see how it solves anything. The compact can say
24 whatever the compact says. There have been so many
25 disagreements already that I am very confused about what's

1 in the compact and what isn't and what's right and what's
2 wrong. I don't think there are any absolutes.
3 MR. MACARRO: Well, that goes to the essence of
4 how you started what you just said. When there are
5 disputes, who gets to decide which interpretation is
6 correct? For the better part of this year --
7 SENATOR KARNETTE: The majority, usually, just
8 like on the Supreme Court.
9 MR. MACARRO: Well, okay. In this case you're
10 essentially agreeing with the notion that the Commission
11 under Hensley ought to go ahead and usurp whatever tribal
12 sovereignty is inherent in the fairness of these compact
13 agreements.
14 SENATOR KARNETTE: Well, but see the fairness is
15 in the mind of the person who's speaking. It seems to me
16 like everybody's trying to be fair. You are, I know, and I
17 feel like Mr. Hensley is too. Now, maybe he made some
18 errors, and I know Mr. Burton tries to be fair, I mean he's
19 been working on this for a long time. Mr. Johnson tries to
20 be fair, we may not always agree what fairness is though,
21 but I think we try, and I know I do. But I just can't see
22 holding up everything because of this.
23 MR. MACARRO: I'm not advocating holding
24 everything up. My position is that with a different person
25 at the chair of this commission, somebody who has more

1 consensus building rather than a czar mentality, I think
2 that this would work out better, at least in light of what
3 the intentions were.
4 Any more questions?
5 SENATOR JOHNSON: My practice here is to vote in
6 favor of every nominee that comes before us, but I do think
7 that when you have a significant factor to be considered in
8 terms of the gaming tribes in California come before us and
9 a very respected leader comes before us and says please
10 don't confirm this gentleman, and to see that kind of
11 division, and I do believe that there needs to be that kind
12 of consensus building. And contrary to Senator Karnette, I
13 cannot support your nomination at this point for that
14 reason. I think that just the fact that there is this
15 history of an inability for whatever reason and whoever's at
16 fault to work together, that does not bode well for the
17 future.
18 MR. MACARRO: No, it doesn't based on one year's
19 activity. If this is a harbinger of what's to come, then we
20 are in for more divisiveness.
21 CHAIRMAN BURTON: Can I ask a question, where are
22 the other tribes that are in opposition?
23 MR. MACARRO: I don't know. I'm the Chair of my
24 tribe.
25 CHAIRMAN BURTON: I understand. I was just saying

1 that to Senator Johnson.

2 MR. MACARRO: I have a not so kind answer on that.

3 CHAIRMAN BURTON: Okay. Take a shot.

4 MR. MACARRO: I think essentially Mr. Hensley has

5 told them things they want to hear and they've been placated

6 by that. And frankly, that's the way things have been

7 working. Pick off a group here, pick off a group there,

8 very Pete Wilsoness tactics.

9 CHAIRMAN BURTON: Well, I don't see --

10 SENATOR JOHNSON: Well, Pete Wilson is a friend of

11 mine.

12 CHAIRMAN BURTON: And believe me, he's no Pete

13 Wilson.

14 (Laughter.)

15 MR. MACARRO: And it worked very well at one time.

16 CHAIRMAN BURTON: Well, I understand your point of

17 view. You know, I've never considered Pechanga anything

18 but a, quote, "hardline tribe," to say the least. No. I

19 mean, they worked hard enough to get two casinos. I mean he

20 was sticking out when everybody was coming in.

21 MR. MACARRO: Right.

22 CHAIRMAN BURTON: You know, I don't see some of

23 the other ones. And my feeling is that I've heard from

24 several of the gaming tribes, some are the wannabes, but

25 some of them were established when you were prior to the

1 policy and everything else, and you know, on that basis, you
2 know, I differ with Senator Johnson. If there were like 13
3 tribes for and nine tribes against, you know, with serious
4 questions, to me that would be a pretty good split. I think
5 the fact that one tribe that's a respected tribe, and you're
6 -- you know, clearly you've been a leader in the whole
7 gaming thing, have a problem which would mean that again I'm
8 missing the thing like is it better to give these nongaming
9 tribes a shot by an extension and be criticized for that, or
10 be criticized for saying, you know, we're cutting them off
11 at May 15th, and I mean, I'm still not sure we're --
12 MR. MACARRO: I don't think you can provide a
13 value judgment to that because you can be in favor or
14 against that, but the fact is we agreed to those terms, even
15 the tribes who were going to be so-called penalized by
16 having to repay again for licenses they still had to put
17 into play but didn't, we all agreed to those terms.
18 CHAIRMAN BURTON: Did the tribes agree to the
19 terms that the CPA's were supposed to send --
20 MR. MACARRO: Yes.
21 CHAIRMAN BURTON: -- the stuff into the State and
22 they didn't do it?
23 MR. MACARRO: There were 61 agreements, 60
24 agreements.
25 CHAIRMAN BURTON: But the accountants didn't make

1 the information available to the State?
2 MR. MACARRO: The State didn't have a relationship
3 with the trustee.
4 CHAIRMAN BURTON: Well, didn't they agree -- were
5 they, Mark, really trustees or CPAs? I mean, they aren't
6 holding your money in trust are they?
7 MR. MACARRO: Well, we can go over that, but there
8 was a legal relationship that --
9 CHAIRMAN BURTON: Yeah, you hired them. But
10 wasn't it part of the compact agreement to make that
11 available, or was it, I don't know.
12 MR. MACARRO: No. Essentially no.
13 CHAIRMAN BURTON: May I say this that I know
14 you'll strongly disagree with. But see had Paula come into
15 play, had Prop 5 not passed you know.
16 SENATOR JOHNSON: All sad words of tongue and
17 heaven.
18 CHAIRMAN BURTON: The saddest are these.
19 SENATOR JOHNSON: It might have been.
20 CHAIRMAN BURTON: Thank you, Mark.
21 Would you like to respond, please?
22 MR. HENSLEY: Well, the only thing I would say,
23 Senator, is some of the characterizations weren't adequate
24 in terms of the accuracy or the quotes. I think were
25 referred to as hardline with the existing tribes. I've

1 attempted to meet with Mr. Macarro on several occasions and
2 hold out that at any time I'll be glad to go to Pechanga and
3 meet with Chairman Macarro at any time on any issue. We're
4 in a meet and confer now. There is a process --
5 CHAIRMAN BURTON: A meet and confer with whom?
6 MR. HENSLEY: With Mr. Macaroo and his tribe, or
7 any other tribe.
8 CHAIRMAN BURTON: No. You just said you're in a
9 meet and confer.
10 MR. HENSLEY: Yes.
11 CHAIRMAN BURTON: So you're in a meet and confer
12 with Mr. Macarro and Pechango, not or any other tribe?
13 MR. HENSLEY: Yes. We're with Mr. Macarro and
14 Salmon Wells at this particular time.
15 CHAIRMAN BURTON: Meeting and conferring?
16 MR. HENSLEY: Yes.
17 CHAIRMAN BURTON: About what?
18 MR. HENSLEY: On a number of issues that they've
19 raised. It's their issue, so we're meeting with them to
20 discuss those issues and talk about them.
21 CHAIRMAN BURTON: And then what happens?
22 MR. HENSLEY: We come to the end of the meet and
23 confer and then there's a process if we agree, either party
24 may go then to court if those issues aren't resolved. We're
25 in the resolution and discussion process.

1 CHAIRMAN BURTON: What kind of issues have you
2 discussed with them?
3 MR. HENSLEY: It's about licensing, some of the
4 issues that Mr. Maccaro has raised here at the table.
5 CHAIRMAN BURTON: It's about licensing what, like
6 whether May 15th can be extended?
7 MR. HENSLEY: Yes, sir, that's part of it.
8 CHAIRMAN BURTON: Part of it is whether the May
9 15th deadline can be waived if there are good efforts, best
10 efforts are made as well?
11 MR. HENSLEY: Yeah. Their position is the State
12 doesn't have a licensing authority and we're discussing that
13 and we're discussing the revenue sharing trust fund.
14 CHAIRMAN BURTON: Well, someone's got the
15 licensing authority, don't they, because they paid money?
16 MR. HENSLEY: We believe so.
17 CHAIRMAN BURTON: Somebody's got licensing
18 authority. Who, you do?
19 UNIDENTIFIED SPEAKER: Yes.
20 CHAIRMAN BURTON: So your position is that you've
21 got the authority to license yourself?
22 UNIDENTIFIED SPEAKER: It's part of the
23 negotiations. It's in the compact.
24 MR. CURRIO: I figure if you can respond from the
25 audience, I'd like to also. We were part of the Sides

1 process. Rincon and many tribes voted to against the Sides
2 process, but we lost by a vote. So when we talk back to the
3 issue of sovereignty though as mentioned earlier, truly not
4 all the compacts were sovereign compacts. Many of us signed
5 the compact because we knew if we didn't sign the compact,
6 we wouldn't have a compact.
7 Rincon Band sat in San Diego for five years as
8 other tribes in San Diego were allowed to operate gaming, as
9 they could not as well Pechanga open six weeks after. We
10 couldn't open our casino. So when we're talking about
11 sovereignty, Rincon Band would completely give you a
12 different story had we been up there and had the 30 to 40
13 minutes to get involved in questions about the compact, the
14 interpretations of what went on with the compacting process,
15 and the numbers of machines and all the issues. And I think
16 I'll make one statement that's the most important one.
17 Regardless of who sits in that commission chair or
18 commission, if they take a position on one issue, they're
19 going to be wrong to another tribe or many other tribes.
20 That's why I made my statements about the ambiguities of the
21 compact. John Hensley nor anybody else sitting on this
22 commission could be blamed for how badly the compact was
23 written. You can't blame a man for something he doesn't
24 have control over. Whoever sits in this position is going
25 to have to make the best -- attempt to make the best

1 interpretation.

2 And other tribes who were affected by the negative
3 interpretation will have to work through the processes in
4 the compact to decide legally through law what those
5 interpretations are. And for the record, Rincon has also
6 caused -- initiated a meet-and-confer process amongst many
7 other tribes to protect our interests to make sure that our
8 compact is given its sovereign right as any other tribe is.
9 And there are a lot of different issues.

10 And when we talk about fairness, I think this is
11 the most important point. There can never be fairnesses in
12 the compact, because tribes who are in gaming, who have a
13 certain amount of machines, only had to pay for licenses
14 that they got beyond what was grandfathered in. So the
15 amount they paid for the 1,250 times amount -- say if it's
16 700 licenses, they paid 840,000 roughly. They didn't have
17 to pay the $2,062,250 that Rincon did. That's just one
18 difference, and there's probably ten or more differences
19 easily in that contract that are ambiguous and different.

20 So there will never be fairnesses in that
21 contract. There will only be the best effort and
22 interpretation and then what doesn't work for tribes, people
23 will have to litigate. So in all fairness to Hensley and
24 his commission, it is not their fault that they have to deal
25 with the unfair and ambiguous contract.

1 And I've seen many times when I went to hearings
2 where some of the -- where tribes were trying to stop the
3 Commission from getting their budget. I mean, I know you
4 guys in the Senate and Legislature know that the tribes were
5 resisting the budget for the Commission also. Assume some
6 of the same tribes were a tribe that's complaining about the
7 Commission hasn't done their job, well you have got to give
8 money. To resist everything they try to do, they can't
9 accomplish anything.
10 I can talk two hours about this, but I think
11 that's enough. It's not Hensley's fault nor the
12 Commission's fault that there's things that are unclear in
13 the contract. We as leaders and tribes will have to work
14 through the processes and costly litigation, if need be, to
15 work those things out. And then in a year and a half from
16 now when we renegotiate, hopefully we can all work out a
17 more favorable process. But the problem happened when Judge
18 Norris left the Sacramento negotiations on the Tuesday after
19 they started, went across the street to the Capitol Building
20 and didn't come back for two weeks. Now, what ever happened
21 across the street?
22 Now we as a tribe sovereign didn't have a right to
23 really participate in negotiations. Not only were we a
24 tribe there, but I was appointed one of the four leaders to
25 be part of the negotiation structured for all the tribes.

1 So I clearly know what happened. I clearly -- at least --
2 I don't know why these things that happened across the
3 street at the 11th hour, there are things that we don't know
4 what happened.
5 But there are a lot of things we do know that
6 happened, which was our interest was not allowed to be
7 lobbied, because the negotiations didn't stay at the table
8 as they should have. And there should have been enough
9 time, whether it be six months or three months or whatever
10 to negotiate a fair contract that could have worked out all
11 these issues, instead of trying to force them into two and a
12 half weeks.
13 CHAIRMAN BURTON: Well, the problem that brought
14 that about was the administration really didn't do anything,
15 and then they were forced with a new Prop 5, and there was
16 like about, I don't know, four days notice.
17 Let me ask one question before we go to the vote.
18 So the licensing fee for the gaming tribes who were into
19 gaming prior, only applies to additional slot machines and
20 not like if they had a thousand slot machines and only got a
21 thousand, two thousand, you only pay a licensing fee on the
22 second thousand and not the first thousand.
23 MR. MACARRO: Right. Let's say you had 1,650
24 licenses, 1,650 machines --
25 CHAIRMAN BURTON: I'm asking him a question.

MR. MACARRO: Oh.

CHAIRMAN BURTON: If I ain't happy, I'll let you get to it, Mark. Yes or no?

MR. HENSLEY: The answer is yes and they pay at the lower rate because there's an explanation, so they pay at the rate as though it were the first thousand, that's correct.

CHAIRMAN BURTON: Find out who negotiated those contracts for the State and tell them not to come looking to me looking for a job.

SENATOR JOHNSON: They're buying electricity now, Mr. Chairman.

(Laughter.)

CHAIRMAN BURTON: Call the roll.

MS. WEBB: Senator Karnette.

SENATOR KARNETTE: Aye.

MS. WEBB: Karnette Aye. Senator Knight. Senator Romero.

SENATOR ROMERO: Aye.

MS. WEBB: Romero Aye. Senator Johnson.

SENATOR JOHNSON: Abstain.

MS. WEBB: Abstain. Senator Burton.

CHAIRMAN BURTON: Aye.

MS. WEBB: Burton Aye. Three to zero.

CHAIRMAN BURTON: Congratulations.

1 Next Michael Palmer.

2 How about bringing up J.K. Sasaki and Arlo Smith

3 all at the same time.

4 SENATOR JOHNSON: Mr. Chairman, I do have some

5 separate questions.

6 CHAIRMAN BURTON: Okay. Well, we'll go ahead

7 then. We can ask them separate anyway. Or however you want

8 to do it.

9 SENATOR JOHNSON: Yes, I intend to ask the same

10 series of questions I've asked each of the other nominees

11 but there's a different element with respect to Mr. Palmer,

12 who I understand did not file his Statement of Economic

13 Interest until five months late, or six months after his

14 appointment.

15 Can you comment on that and why it was not filed

16 in a timely fashion.

17 MR. PALMER: Senator, I was informed by legal

18 counsel with the Division in our staff that it was due

19 within 30 days of our adoption of our Conflict of Interest

20 Code and for the FPPC code, so it was requested as part of

21 the Senate confirmation. However, I informed them that it

22 was not due and I had wanted to wait until we had the code

23 adopted to make sure I did it properly. They had initially

24 no problem with that. When they did need it, I did file it,

25 even though the code had not been adopted. And when it was

1 adopted, I filed another one within 30 days as required.
2 SENATOR JOHNSON: The same question that I asked
3 earlier nominees. Were you at any time given any advice
4 from the Governor's office about what the requirements, both
5 the letter and the spirit of the law and disclosures and
6 what might constitute potential conflicts of interest? Were
7 you given any training or advice, admonishment, anything
8 from the Governor's office with respect to that? And I'd
9 like the other two to comment on that as well.
10 MR. PALMER: Okay. Well, let me go first. I had
11 extensive conversations with Michael Numaki, the appointment
12 secretary on what we were required to do for this
13 appointment. I was also given --
14 SENATOR JOHNSON: Was this prior to your receiving
15 the appointment?
16 MR. PALMER: Prior to receiving. And then --
17 SENATOR JOHNSON: So more than six months ago?
18 MR. PALMER: That's correct. And then
19 subsequently, the Division of Gambling Control provided us
20 with a binder with all the statutes that -- copies of the
21 compacts, Gambling Control Act, all the court cases, in fact
22 two volumes, to read. That was provided by Harlan Goodson,
23 which we did, and they also provided us with Bagley Keene
24 film or tape which we --
25 CHAIRMAN BURTON: Well, hold on. Bagley Keene's

1 like open meetings isn't it?

2 MR. PALMER: Uh-huh.

3 CHAIRMAN BURTON: So I mean what he's talking

4 about is what do we call that, the Statement of Economic

5 Interest?

6 SENATOR JOHNSON: Statement of Economic Interest

7 and the Potential for -- and look, let me just be -- I

8 thought I was earlier, but let me just again --

9 CHAIRMAN BURTON: Let me guess, it's not aimed at

10 anyone individually.

11 SENATOR JOHNSON: It's not, but we have clearly

12 had questions arise about persons that we have already as a

13 Committee and as the Senate confirmed, who have been

14 appointed, or in some instances reappointed, and then

15 questions have arisen as to potential conflict of interest.

16 And just to put an exclamation point behind it, that has the

17 potentiality to be plain damn embarrassing. Why didn't you

18 ask the questions, Senator Johnson? So Senator Johnson

19 intends to ask the questions, and end up with some certainty

20 what exactly the Governor's office's approach on these kind

21 of issues has been. But it seems to me, again, to put it

22 very bluntly that so far this administration has been

23 somewhat ethically tone deaf about conflict of interest, not

24 only the letter of the law but the spirit that underlines

25 that law.

1 CHAIRMAN BURTON: Let's stick with -- all right.
2 So basically you were late. What's the latest, as soon as
3 you get appointed, you have 30 days?
4 SENATOR JOHNSON: Thirty days normally.
5 CHAIRMAN BURTON: Okay. So you were late in
6 filling out the form and putting it in because who said that
7 was all right?
8 MR. PALMER: Well, we were a new commission, there
9 were no conflict of interest codes.
10 CHAIRMAN BURTON: Well, you have this law of the
11 State of California.
12 SENATOR KNIGHT: That's right.
13 MR. PALMER: Well, I was advised by counsel
14 that --
15 CHAIRMAN BURTON: Who, what counsel?
16 MR. PALMER: Rene --
17 CHAIRMAN BURTON: No, but I mean which counsel for
18 whom or what?
19 MR. PALMER: She was acting counsel for the
20 Commission at the time.
21 SENATOR JOHNSON: Can I ask on that point, why did
22 the other commissioners file their statements in a timely
23 fashion? Weren't they receiving the same advice from the
24 same people?
25 Do you care take a crack on it? Did you file

1 within 30 days?

2 MR. SMITH: Oh, yes, I filed. In answer to your

3 question, my recollection is that when the Governor -- we

4 received the information from the Governor on the

5 appointments, it included a Form 700, with a reference to

6 the Fair Political Practices Commission and suggested we

7 contact them, which I did. I know and some of the other

8 commissioners and I believe Mr. Palmer also, and they

9 stressed a tape about the filing which we listened to.

10 SENATOR JOHNSON: In the nature of an ethics

11 training course; is that correct?

12 MR. SMITH: Yes, that's correct. And in the

13 course of my earlier private -- public career, I filed a

14 number of these as well. I filed it and then I refiled

15 again shortly within -- before this here, in the last month.

16 MS. SASAKI: Yes, I also did the same as

17 Commissioner Smith. In fact, Commissioner Smith and I

18 viewed the conflict of interest video tape together and

19 signed up with our staff member, Alisa King, so she can show

20 we actually did it.

21 SENATOR JOHNSON: They had a record that you

22 actually sat and watched the tape?

23 MS. SASAKI: Yes. That we actually watched the

24 tape.

25 SENATOR JOHNSON: And this happened within the 30

1 days?

2 MS. SASAKI: It happened, I don't know if it was

3 in the 30 days or not.

4 MR. SMITH: Shortly thereafter.

5 MS. SASAKI: But then I filed it with -- when

6 Nettie Sabelhaus asked for all our disclosures, and then we

7 filed it again once our Conflicts of Interest Code was

8 adopted.

9 SENATOR JOHNSON: So apparently neither of you got

10 the same advice that Mr. Palmer did?

11 MR. SMITH: I don't know.

12 SENATOR JOHNSON: Okay. Then the final question,

13 Mr. Chairman, and then I'll stop these. Just, I'm going to

14 ask this of everybody for a while that comes before us on a

15 confirmation is, what is your sense, not only of the legal

16 requirements, but of the moral and ethical requirements for

17 you to disclose potential conflict of interest?

18 MR. PALMER: Well, I think it's -- it's important,

19 especially as a member of the Commission that we disclose

20 any conflict that we may have, and there's specific

21 conflicts that are enumerated and again we were told that,

22 that we were sworn to avoid.

23 MR. SMITH: It's my view that we better be very,

24 very careful to avoid any conflict or even appearance of

25 conflict, because if we are to have the confidence of the

1 public, particularly in this highly sensitive industry, if
2 the public is to have confidence, and the players to have
3 confidence, and there's to be indeed a protection of the
4 clubs themselves, we've got to have a situation where
5 there's absolutely no doubt that there's no conflicts or
6 potential conflicts existing between the commissioners who
7 have certain authorities and the card clubs in certain
8 roles. So I think it's something you've got to look at very
9 carefully and be very strict on yourself.
10 MS. SASAKI: Yes, I agree with Commissioner Smith,
11 you definitely have to be above board, and even -- just no
12 conflicts at all with respect to any types of interests of
13 our constituents or anything.
14 SENATOR JOHNSON: Neither the conflict or the
15 potential perception?
16 MS. SASAKI: Yeah, or perception too. You should
17 have the perception.
18 SENATOR JOHNSON: Mr. Chairman, I appreciate your
19 allowing me the time to raise these issues. I mean, we've
20 seen in recent weeks appointees who have proclaimed
21 ignorance of the requirements to disclose and have offered
22 in my opinion less than satisfactory defenses of what seem
23 on the face to be definite conflicts, so I intend to ask
24 these questions. I thank you.
25 CHAIRMAN BURTON: Mr. Palmer, most of your stuff

1 says you like real estate or supermarket investments, stuff
2 like that?
3 MR. PALMER: That's correct.
4 CHAIRMAN BURTON: And none of your investments --
5 you took a quick look at Tropicana but decided that was real
6 property, not the casino?
7 MR. PALMER: It just happens to be on that street.
8 CHAIRMAN BURTON: Oh, is it?
9 MR. PALMER: Yes.
10 CHAIRMAN BURTON: Senator Romero?
11 SENATOR ROMERO: No questions.
12 CHAIRMAN BURTON: Senator Knight?
13 SENATOR KNIGHT: Yes, one question of Mr. Palmer.
14 Is this your first government appointment?
15 MR. PALMER: Yes, sir.
16 SENATOR KNIGHT: And you've had no dealings with
17 the government in the past at all?
18 MR. PALMER: No, I have not, Mr. Senator.
19 SENATOR KNIGHT: Thank you.
20 CHAIRMAN BURTON: Senator Karnette?
21 SENATOR KARNETTE: I don't have a question, but I
22 knew his mother. And anybody who grew up with his mother,
23 she was the worse sixth-grade teacher, the kids were scared
24 to death, and I taught next door to her. He's got to be
25 okay.

(Laughter.)

SENATOR JOHNSON: Maybe she should have done the video.

SENATOR KARNETTE: Listen, you would have learned something if you had her.

CHAIRMAN BURTON: All right. I believe all of the witnesses that testified were witnesses either in support or in opposition. Chairman Macarro said he had no problem.

Would it be easier, do you want to separate or anything or do them both?

I'll move the nominations as a group. Secretary, call the role.

MS. WEBB: Senator Karnette.

SENATOR KARNETTE: Aye.

MS. WEBB: Karnette Aye. Senator Knight.

SENATOR KNIGHT: Aye.

MS. WEBB: Knight Aye. Senator Romero.

SENATOR ROMERO: Aye

MS. WEBB: Romero Aye. Senator Johnson.

SENATOR JOHNSON: Aye.

MS. WEBB: Johnson Aye. Senator Burton.

CHAIRMAN BURTON: Aye.

Thank you. Congratulations.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 4:45 p.m.)

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I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing Senate Rules Committee proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

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SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

ASSEMBLYMAN DICK DICKERSON

JAN KRAEPELIEN, Freshwater Residents

WILLIAM BERTAIN, Attorney for Elk River Residents

KRISTI WRIGLEY, Elk River Resident

DAN MACON, Private Citizen

SENATOR JACKIE SPEIER

BILL ALLAYAUD, Sierra Club California

ARTHUR FEINSTEIN, Golden Gate Audubon Society

LENNIE ROBERTS, Committee for Green Foothills

INDEX

1 PROCEEDINGS

2 --oOo--

3 SENATOR JOHNSON: Seeing that Republicans can have
4 courage, we're going to go ahead and begin in the absence of
5 Senator Burton.

6 William Hoy, Member of the California Regional
7 Water Quality Control Board, North Coast Region.

8 ASSEMBLYMAN DICKERSON: Good afternoon, Mr. Vice
9 Chair. Assemblyman Dick Dickerson here to introduce to you
10 Supervisor Bill Hoy, Siskiyou County Board of Supervisors.
11 He currently serves as the chairman of that board. He's
12 served them now for the past six years and is in the middle
13 of his second term. He's also been working for the people
14 of Northern California on the Regional Water Quality Board
15 for the past six years, so you're considering his
16 reappointment here today.

17 I'm here to testify strongly in support of that
18 nomination. He and his wife Nancy have been ranchers in
19 Siskiyou County for a good number of years. He understands
20 the issues concerning the water board in that area. He
21 works for the interest of all people of Siskiyou County and
22 the Northern District that he would be representing there.
23 So I strongly urge the Committee to recommend this
24 nomination to the full Senate.

25 And I thank you very much for allowing me to

1 introduce Supervisor Bill Hoy.

2 SENATOR JOHNSON: Mr. Hoy.

3 MR. HOY: Thank you, Mr. Vice Chair and Members of
4 the Senate Rules Committee. It is indeed a pleasure to be
5 here and I'd like to thank Assemblyman Dickerson for such a
6 gracious introduction.

7 Probably the best way to introduce myself is I've
8 served six years on the water board, and some of the issues
9 that have been brought before us today concerning my
10 confirmation, I'm proud to say that last year when I was
11 chairman of that board, we probably took the most aggressive
12 action concerning this matter that the board had taken in
13 the past five years.

14 We attempted -- we had two public hearings, one
15 tour of the site, and we went to work trying to put together
16 a hearing on this issue. We had some conflicts and over the
17 course of three and a half months my vice-chair and I worked
18 together, having phone conference calls once or twice weekly
19 on this issue. We had no procedure to follow how to put
20 together this hearing, so we had to make our own proceedings
21 concerning this. When we were just ready to proceed with
22 the hearings, two of our terms on the board had expired. I
23 was reappointed, another member was not. We had another
24 member appointed to make a quorum. There was a conflict in
25 that individual's background.

1 So three weeks before the hearing, we had a new
2 member appointed, but in all fairness to her, we had three
3 file boxes full of information, so -- and we had already had
4 taken two tours of the watershed and two hearings, I felt it
5 was unfair to her and to the parties involved that we
6 proceed. We then changed chairmanship of the board and as
7 of yet we haven't been able to put together a hearing.
8 This matter has been appealed to the State Water
9 Resource Control Board and it is now to be heard in the
10 superior court in Humboldt County.
11 So thank you.
12 SENATOR JOHNSON: Witnesses in support.
13 MR. HOY: Mr. Vice Chair, it is my understanding
14 that any witnesses would only have a minute and a half and I
15 didn't think it fair to individuals in my county to take
16 four hours to drive down here for a minute and half --
17 SENATOR JOHNSON: I can understand. But there may
18 be someone that neither you nor I are acquainted with.
19 MR. HOY: Oh, I'm sorry, sir.
20 SENATOR JOHNSON: Witnesses in opposition. Please
21 come forward.
22 MR. KRAEPELIEN: And if we could -- we're actually
23 opposed to two nominations, so we would be willing to listen
24 to Dina Moore and then respond to both of them.
25 SENATOR JOHNSON: All right, fine. Please, if you

1 care to come forward.

2 MR. KRAEPELIEN: I was saying that we're opposed

3 to the nominations of both Mr. Hoy and Ms. Moore, and if she

4 want's to speak in favor of both the same reasons.

5 SENATOR JOHNSON: No, that's fine. Just come

6 forward and give us your name and your reasons, that's fine.

7 We will presume that you're incorporating by reference for

8 both nominees.

9 MR. KRAEPELIEN: I'd like to say I have eight

10 copies of this. There's three of us here to speak, and we

11 hope to be able to have more than a minute and a half,

12 please, if possible. We've driven down and we've been at

13 this for four years trying to do the same thing, we're

14 continuing to do that now.

15 My name is Jan Kraepelien. It's K-r-a-e-p-e-l-i-

16 e-n. I'm a thirty-year resident of Freshwater, and a member

17 of the Freshwater Watershed Working Group and Humboldt

18 Watershed Council. We are residents and long time -- long

19 time residents and property owners in Humboldt County. We

20 are not opposed to logging by any means.

21 We are seeking to stop these two nominations for

22 two reasons. One is the vote, or however the procedure was

23 done, to cancel these hearings. These were a violation of

24 our due process rights. They were canceled. In the middle

25 of the hearings, two happened -- they had been postponed

1 twice, and they came up to us and finally just canceled.
2 We're just finding out now how this happened, we do not
3 know. We apologize right off the bat, but we would have
4 also opposed Mr. Crowley's nomination, but it frankly
5 slipped by us. We're a citizens' group.
6 The second reason we oppose this, these
7 nominations, we feel it's a pattern of the Governor who has
8 in a sense micromanaged certain committees and boards to
9 basically subvert the law, meaning the Board of Forestry and
10 the Water Quality Board.
11 I'm educated as a scientist. I work in a
12 nonprofit section, now I'm a State-certified EMT. I have
13 worked to get the water in Freshwater. I'm a very much a
14 community-oriented person. I just received an award from
15 Virginia Steen Markenstein (phonetic) winner of the six
16 community builders for last year. I gained -- first off I
17 gain nothing by doing this, I have no interest in it except
18 to protect my watershed. I make nothing out of this. In
19 fact, it is both a pain to me personally and quite a pain
20 professionally for me to do this.
21 We have been asking for the same thing for four
22 years. We want independent analysis of the situation done,
23 and we want monitoring. The pictures that I just passed out
24 to you, let me show the photographs first, and that is the
25 one that's the NASA photographs -- but this is the second

one. The first one -- these are NASA photos. They are part of a UC study which I will explain in a moment. These are photographs of Freshwater in 1994 and 1998. If you look at the 1994 photograph you will see a small blue area under the letter A, that is the Cummings Landfill, about a hundred acre, you know, clear area. In 1998, you see what Pacific Lumber, under the direction of Charles Hurwitz and Maxxam has done to our watersheds. Those are all clear cuts appearing in there. The reason they show up that clearly is because they were kept clear by herbicides. So they have, you know, in a sense shot themselves in the foot by making them so visible from space.

We want to be very clear that the old kind of logging that was done in the old P.L. was satisfactory with us, the watershed was healing. Once Hurwitz came in and doubled and tripled the logging in our watershed, we started to see these damages. We are among five 303 just de-listed watersheds in the area. There's Freshwater, Elk River, Bear, Jordan, and Stits are the five of them. According to the water law and the Porter-Cologne Act, these watersheds cannot be further impaired, and that's what this is all about.

The first map here, this one is one that I made up and it was presented to the Board of Forestry in 1997. On the basis of this and other testimony we gave, this is what

1 was going to be done. If you look at the two, the
2 photograph and that map I made up there, they are really
3 very, very similar, in fact, almost exactly coinciding.
4 The Board of Forestry took two actions based on
5 what we've done then. One was to set up a committee to look
6 into our things about cumulative watershed effects,
7 something that was not being addressed in THPs, in timber
8 harvest plans. They also set up and we asked for an
9 independent analysis. This was set up under the UC study
10 team, led by the University of California at Berkeley. That
11 report has just come out and it affirmed what we were
12 saying.
13 Two of the key findings of that report are that
14 the California Department of Forestry has no way to really
15 evaluate cumulative water effects, so the cumulative damage
16 effects that is going on. And second was that CDF is
17 defining away the problem. Those are a direct quote there,
18 "defining away the problems." In other words, they are
19 taking what the Legislature has put down in the law and
20 defining away things. For example, the word significant or
21 cumulative watershed effects, they were just defining away,
22 they said it didn't exist, they had no way to measure it,
23 they were just not going to deal with it. Those photographs
24 show you cumulative watershed effects. When you log that
25 much, you get these kind of damages.

1 The Governor frustrated our efforts there at the
2 Board of Forestry. An interesting thing has come up here,
3 that these hearings for the Water Quality were postponed
4 because of a new member being aboard. Well, we saw a new
5 member of the Board of Forestry sit and read off the changes
6 that were going to be made in the cover rules package that
7 we have gotten forth to there that were directly from the
8 Governor. We felt that that was the way the line was coming
9 through. And this was a new appointee, the rest of the
10 members sat there and listened and they just voted aye and
11 that was it. It was all over. So it's being very carefully
12 directed.
13 The second objective report -- I'll be done in
14 just one minute, please.
15 SENATOR JOHNSON: I would prefer that you direct
16 more specifically --
17 MR. KRAEPELIEN: That's where I'm coming right
18 now.
19 SENATOR JOHNSON: -- your objections to this
20 nominee. Submissions are going to be judged on the basis of
21 brevity.
22 MR. KRAEPELIEN: I appreciate that. That's were
23 I'm coming to is water quality.
24 The staff report was the next objective report.
25 These are people who have no stake in it at all. Water

1 Quality staff had no interest in coming to our side or
2 coming to support the things that we were saying except to
3 do their job. In fact, it was quite an intrusion for them
4 to do that. These hearings were canceled with no technical
5 and legal basis that we can see. The Regional Water Quality
6 staff is the ones that are experts in this. It has been
7 said that this is going to the State board, for the State to
8 investigate. It's our region that is investigating this.
9 Redwood watersheds are different than other watersheds, so
10 what's going in our area has been studied by that staff and
11 has come out agreeing with what the UC study said again, for
12 instance.
13 So we are also -- one other fact. This has been
14 raised as a question about THPs and the lead agency being
15 CDF. This argument is not about the approval of timber
16 harvest plans or how that process is done, this is about
17 what happens once logging operations start. Once they
18 start, water quality is damaged. This water quality board
19 is in charge of seeing that doesn't happen, much like if a
20 logging truck speeds through an area, it's the CHP that's
21 going to deal with the problem, even no matter what the THP
22 was. The same kind of situation.
23 So we are asking you that you turn down these two
24 nominations. We are asking that another office -- that
25 there be an investigation by the Auditor General into the

1 effects and the workings of the CDF, of the Board of
2 Forestry, and the Board of -- the Water Quality Board.
3 And I would hope that you give Kristi Wrigley and
4 Bill Bertain a chance to speak, please, for a minute too.
5 Thank you very much.
6 SENATOR JOHNSON: All right. Any other witnesses?
7 Let's please try and be very brief, and not repetitive, if
8 possible.
9 MR. BERTAIN: Thank you, Mr. Chairman. My name is
10 William Bertain, I'm an attorney in Eureka, California, and
11 it's been my privilege to represent the residents of the Elk
12 River Watershed for a number of years in our attempts to
13 protect their property rights. I'd just like to ask the
14 Chairman or the Vice Chairman, how many -- has my letter of
15 July 31st been made available to the Members of the
16 Committee?
17 SENATOR JOHNSON: Yes.
18 MR. BERTAIN: Okay. You understand -- or from my
19 letter, I hope you have been able to conclude that we object
20 to the acquiescence of Mr. Hoy and Mrs. Moore to the actions
21 of the chairman of the Regional Water Quality Control Board,
22 that's Mr. Daniel Crowley, whose law firm has in the past
23 and continues to, as far as we know, represent Pacific
24 Lumber. Now, Pacific Lumber is the -- has been a focus of
25 the Regional Water Quality Control Board's staff activities

1 for the last year or two because of their destructive
2 policies on watersheds within their ownership over the last
3 15 years since Charles Hurwitz took over Pacific Lumber.
4 This has become a very important issue in Humboldt
5 County. The destruction of watersheds, the ability for
6 people who live in their homes without getting flooded out
7 from the aggregation of streams resulting from massive,
8 irresponsible clearcutting has grabbed the attention of the
9 public and caused a lot of damage too.
10 The stakes are high. These positions on the
11 Regional Water Quality Control Board are very important.
12 It's important I think for the function of the democracy and
13 within the -- and for the regulatory system for people to
14 have the sense of fairness, and the appearance of fairness,
15 and for -- one of the partners, as I understand, in the firm
16 in which Mr. Crowley is associated to kind of run
17 interference for Pacific Lumber and Maxxam in dealing with
18 the watershed, with the water quality issues, strikes me,
19 and I think it would strike you and the members of the
20 public, is entirely unfair. Mr. Hoy's problem, I believe,
21 has been that he has acquiesced to Mr. Crowley's running
22 interference for Pacific Lumber and for -- and the
23 disruption of this whole process of hearings which were
24 asked for more than a year ago, and were scheduled last
25 September.

Is that a sign?

(Laughter.)

Is that an indication?

SENATOR JOHNSON: It may be a sign from God, but it wasn't from me.

(Laughter.)

MR. BERTAIN: Okay. Thank you.

The question of impartiality, I believe, is critically important, and Mr. Hoy has been on the Committee -- on the board for a number of years, and he has had the opportunity to rein in Mr. Crowley's activity. In the last eight months he has not done so.

Mrs. Moore -- it's an awkward situation. Mrs. Moore is from Humboldt County. She lives, I understand, at the top of the Freshwater watershed. She -- her family has a large number of acres. I've had -- I've been informed that it's in excess of 4,000 acres, and a large amount of that acreage, we believe and we're informed, that it borders Pacific Lumber's lands in both the Yager, Y-a-g-e-r, Watershed, which is a very large watershed, and in the Freshwater watershed, which is one of the watersheds that is being subjected to review by the Regional -- or what is supposed to be subjected to review by the Regional Water Quality Control Board.

Every other agency -- and I mention that because

1 it seems to me to raise the question right off the bat, is
2 there a potential for conflict of interest here --
3 SENATOR JOHNSON: I'm sorry, I'm not following you
4 here. Are you back on Mr. Crowley?
5 MR. BERTAIN: No, I'm back on Mrs. Hoy -- pardon
6 me, Mrs. Moore. And that is if her family's ownership
7 borders Pacific Lumber's property in both watersheds, Yager
8 and Freshwater, and she's being asked -- and it may be that
9 they have mutual rights of way, they share mutual concerns
10 regarding the use of lands in that watershed --
11 SENATOR JOHNSON: Sir, I'm going to cut you off at
12 this point. I think we've gotten the gist of your
13 testimony, and I think to get into speculation that you're
14 indicating that you have no evidence.
15 MR. BERTAIN: I can assert that the ownership is
16 very large and they border Pacific Lumber Company. I would
17 ask --
18 SENATOR JOHNSON: And I didn't interrupt you up to
19 that point. It's when you got into the speculation beyond
20 that that I interrupted you. If you would like to quickly
21 conclude your testimony.
22 MR. BERTAIN: I would. And we thank you for the
23 opportunity to speak today.
24 We believe that every other agency in the state
25 has pretty much rubber stamped, closed their eyes, and acted

1 pretty much in complicity with Pacific Lumber's policies of
2 destroying watersheds in Humboldt County.
3 The only agency that didn't in the last three or
4 four years has been the Regional Water Quality Control Board
5 staff. And the staff was trying to do a good job, and a
6 great deal of work was done, and then Mr. Crowley takes over
7 the chairmanship, the hearings are postponed and then
8 canceled, and Mr. Hoy and Mrs. Moore acquiesced in that.
9 One more thing, and that is a Head of Agency
10 Appeal was prepared by the appropriate officials at the
11 Regional Water Quality Control Board staff. That Head of
12 Agency Appeal went to Sacramento from the Regional Board
13 staff, and in -- on May 21st, 2001, with the acquiescence,
14 we understand that Mrs. Moore and Mr. Hoy -- Daniel Crowley
15 on this letter head of his law firm, of which one of the
16 chief lobbyists for Maxxam works, withdrew that Head of
17 Agency Appeal, we believe in violation of the Administrative
18 Procedures Manual, Water Quality, chapter 17 on the appeal
19 of timber harvesting plans.
20 It's not -- it hasn't been possible for us to
21 develop all the arguments to establish that if your
22 Committee or some Committee in the Legislature could look
23 into this type of behavior, to conduct an investigation,
24 because it is a serious, serious -- I mean there's a lot of
25 Coho salmon issues, it's -- issues are at stake, property

1 rights of people down the stream from Pacific Lumber are at
2 stake. This is a critical issue in Humboldt County and we
3 believe that the property rights of the people up in
4 Humboldt County have been ignored by every agency, except
5 the staff, not the -- of the Regional Water Quality Board.
6 And the board itself, however, has been --
7 SENATOR JOHNSON: Cutting to the chase, you like
8 the staff, you don't like the board.
9 MR. BERTAIN: And we would like different
10 appointments to the Board.
11 SENATOR JOHNSON: Can we hear from the final
12 opposition witness.
13 MR. BERTAIN: Thank you, Mr. Chairman. To whom
14 would I present these documents?
15 SENATOR JOHNSON: I think we've been very generous
16 with time, so if you would kind of try to encapsulate
17 your --
18 MS. WRIGLEY: I'll try, but I wrote it down so it
19 will be probably four minutes.
20 Okay. My name is Kristi Wrigley and I own and
21 work a small eight acre, thousand tree apple farm in Elk
22 River. My family has continuously farmed this for 98 years.
23 There is a quarter mile of river that defines my property.
24 It's my front yard, my backyard, and my side yard, and we've
25 looked at it.

The Clean Water Act is not just a bunch of words on paper to be eclipsed by other words on paper like the Board of Forestry rules, it is the law to be followed by one and all, whether you're an individual, a corporate industry, or a public agency. The water of Elk River is the only source of good water for those of us who are living there, and it was degraded to the point of being unacceptable for either domestic or agricultural use after my only upstream neighbor P.L./Maxxam logged 60 percent of the watershed above me in less than ten years and logged right straight through not one, but two rainy winters. That was over four years ago, and I have been trying to get this huge problem adequately addressed ever since.

The only public trust agency willing and capable was North Coast Regional Water Quality Control staff. By addressing Water Quality Board more than nine times, and staff about a dozen times, those of us who were the affected residents in Freshwater and Elk were able to get a hearing set which would address the lack of water quality and other water-related problems, such as flooding, and for me, loss of productivity in my orchard.

Water Quality was able to get P.L./Maxxam to deliver domestic water and some ag water through a cleanup and abatement order in very late '98. And that was before Gray Davis appointed Dan Crowley to the North Coast Regional

1 Water Quality Board. Dan's a partner at a law firm,
2 Grandham & Reilly, which represents big business which you
3 have heard about. And it represents interests like my --
4 P.L., my upstream neighbor, that's responsible for the
5 logging that caused all my water quality problems.
6 Dan not only was appointed to the board, but he
7 serves the prestigious position of chairman.
8 SENATOR JOHNSON: Again, I'm going to ask you to
9 get on with it. He's already serving, we're here.
10 MS. WRIGLEY: Okay. I'm saying the board
11 postponed hearings not once but twice, and finally
12 indefinitely. The hearing was very important to those of us
13 that were affected residents as Water Quality was the only
14 public trust agency willing to help us with this. Suddenly
15 all the hard work that we as residents had done was undone
16 and all the very pertinent and important work that Water
17 Quality staff had done and produced was relocated to the --
18 and were trying to deal with that now, and it's probably
19 never.
20 The two nominees for North Coast Regional Water
21 Quality Board, Ms. Moore and Mr. Hoy, are complicite in the
22 measure and we're not only being deprived of our private
23 property right, but deprived of due process. This is
24 unacceptable in a public trust agency.
25 The Clean Water Act was passed because water is so

1 basic to survival and so paramount in importance at the same
2 time. Water quality needs to be respected, the basic plan
3 needs to be adhered to by everyone, industry as well as
4 individuals. And when that isn't being done, the Clean
5 Water Act, the Porter-Cologne Act need to be administered
6 openly, fairly, and honestly. Anyone not determined to do
7 so in order to preserve, protect, and restore water quality
8 for the residents should not be on the board.
9 Ms. Moore lives in Humboldt County, albeit up on
10 Neeland (phonetic), where she might not be directly familiar
11 with our water quality problems in the lower valley. Very
12 few people are. I spoke briefly with Ms. Moore in February
13 and she didn't seem to comprehend the gravity and
14 significance of the situation for me and the other residents
15 in Elk River.
16 I have already been affected by this for over four
17 years and we don't need to push out dealing with the
18 destroyed water quality and even more damage to my orchard
19 and our flooding, our ingress and egress.
20 Mr. Hoy has been on the board and he surely should
21 know how terrible the conditions in Elk River are. He was
22 much more supportive of the hearing before the new chairman
23 came on the board. Neither of these people should be
24 confirmed for their lack of willingness to apply the Clean
25 Water Act and the Porter-Cologne Act fairly and for their

1 willingness to deny citizens who are residents their due
2 process.
3 As an aside, an irony of this situation is clear
4 to me, because in 1980 we were involved in the Apple Maggot
5 Eradication Program and we had two flies on the ranch, and
6 20 people from Sacramento came to visit. I've been
7 struggling for four years to get you guys to pay attention
8 to the four to ten feet of silt that's in my river and it's
9 depriving me of my private property right, my riparian water
10 right. It is extremely important.
11 Thank you.
12 SENATOR JOHNSON: Thank you.
13 MR. KRAEPELIEN: Can I have 30 seconds to sum up,
14 literally 30 seconds?
15 SENATOR JOHNSON: All right.
16 MR. KRAEPELIEN: Thank you.
17 SENATOR JOHNSON: Thirty seconds.
18 MR. KRAEPELIEN: I appreciate it.
19 I just wanted to say why this is important. The
20 point was to make Freshwater a test case for different kinds
21 of logging operations, because there's one single owner
22 that's doing 99 percent of the logging, Pacific Lumber,
23 instead of being able to shift it off. So it's very
24 important. What we've set up, we think, is models for
25 future work on monitoring, and it's been to monitor.

1 Monitor the water quality. And under -- as I understand it,
2 under the Habitat Conservation Plan and the Porter-Cologne
3 Water Act that they have to monitor, perform after being
4 requested to do so, and they were requested and did not do
5 this. And I also have materials if you would like of the UC
6 report and my deposition as well.
7 SENATOR JOHNSON: All right. Give those to the
8 Sergeant as well.
9 MR. KRAEPELIEN: Thank you very much.
10 SENATOR JOHNSON: Mr. Hoy.
11 MR. HOY: Yes, sir.
12 SENATOR JOHNSON: Do you care to add anything to
13 the discussion that we've had.
14 MR. HOY: Where does one start? Perhaps paramount
15 in this whole discussion, it was referred to a time or two
16 of Mr. Crowley's possible conflict of interest with these --
17 the association with his law firm. I'd like to --
18 SENATOR JOHNSON: Well, you know, Mr. Crowley is
19 not up for --
20 MR. HOY: Oh, okay, fine. Thank you.
21 SENATOR JOHNSON: -- today. So I don't know
22 whether we need to go into that.
23 All right. What's the pleasure?
24 A question. Senator Romero.
25 SENATOR ROMERO: Thank you. The US EPA, the

1 nonpartisan legislative analyst, and others have noticed
2 that in recent years there have been a decline, a rather
3 precipitous decline, in inspections and enforcement
4 activities by the Regional Water Quality Boards, and I'm
5 curious as you've served on the board for six years, can you
6 help the Committee understand what has contributed to this
7 decline and what specific actions, if any, you have
8 undertaken to turn this trend around?
9 MR. HOY: Okay. Thank you. I'm glad you asked
10 that question.
11 To give you an idea of the magnitude of this
12 region, my county alone has 6,400 square miles in it. Part
13 of Modoc County, Humboldt, Del Norte, Sonoma, Mendocino, and
14 Trinity Counties are in this region. So it gives you a
15 magnitude of how large this facility -- this region is. Up
16 until a year and a half ago there was less than 16 staff
17 members, and not only did they deal with forest practice,
18 they also did underground tank cleanups, hazardous waste
19 sites, and all that. So you were dealing with maybe at the
20 most eight staff members to do with all the timber harvest
21 plans, all the inspections of these facilities.
22 In the last year and a half our staff has doubled,
23 so our inspection numbers have gone up. So we are -- you
24 know, if we have the manpower, we have the ability to do
25 more inspections, and we are doing more inspections now.

1 SENATOR ROMERO: So it's been a question of
2 staffing, and with the increase in staff there are more
3 inspections taking place?
4 MR. HOY: Yes.
5 SENATOR ROMERO: Let me just ask a follow-up
6 question. If you could describe what circumstances would
7 you bring an enforcement action against violations of
8 discharge requirements, and if you have done so on the board
9 in the last six years, if you can describe that?
10 MR. HOY: In what sort of discharges?
11 SENATOR ROMERO: If you can go ahead and take the
12 ones that --
13 MR. HOY: All right. Right now there's one that's
14 right in the middle of Santa Rosa. There's a pocket of
15 houses in Santa Rosa that are in the county but are
16 surrounded by city. They have -- the groundwater, where
17 they get their water for their homes, since they're not in
18 the city, they're not on the water system, has been
19 contaminated by hydrocarbons and it's been linked back to
20 dry cleaning facilities. And we are in the midst of through
21 our staff, and this happened while I was the chairman, we
22 directed the staff to do all we can to enforce and find out
23 who is at fault. We have enlisted the City of Santa Rosa,
24 the county, we have provided drinking water for these folks.
25 We have provided wells with caps so they have clean water.

1 The City of Santa Rosa is in the process of bringing their
2 water system to these folks and make it available to those
3 if they so choose. So that's one of the enforcements we're
4 doing.
5 SENATOR ROMERO: Okay.
6 MR. HOY: Another one, if you'd like, is Jenner
7 Creek, which is a stream, it provides water for another
8 small community, they take their water out of this creek.
9 We just two months ago instituted an in-stream monitoring
10 program to ensure that logging upstream has no effect on the
11 quality of their lives.
12 Those are some of the actions we've taken.
13 SENATOR ROMERO: Thank you.
14 MR. HOY: You're welcome.
15 SENATOR KNIGHT: Move the nominee.
16 SENATOR JOHNSON: All right. There's been a
17 motion. If someone were to note the lack of a quorum at
18 this moment, the Chair would have to accept that. So what
19 I'm going to do is ask that Dina Moore come forward and
20 let's have that discussion, and I think that we've had the
21 opposition testimony applicable, so we will incorporate,
22 sir, by reference the earlier remarks of the three
23 witnesses, unless there's objection.
24 Yes, ma'am.
25 MS. MOORE: Good afternoon. It is with pleasure,

1 I think, that I'm able to address you today. What I'd like
2 to do is give you my comments regarding my confirmation to
3 the North Coast Regional Water Quality Control Board. In
4 addressing you today, I would like to share with you some of
5 my own experiences that have served to help me qualify -- to
6 be qualified to serve as a member of this board.
7 Over the past several years, I've worked
8 extensively with the EPA in building a collaborative,
9 publicly supported, total maximum daily load for the Van
10 Deusen River Watershed, a watershed that is impaired and on
11 the EPA's 303 delisted.
12 During that process, we partnered with the
13 University of California Cooperative Extension and USDA's
14 Natural Resource Conservation Service. I helped EPA
15 facilitate multiple public outreach and educational
16 meetings. As stated in the EPA annual report for 2000, at
17 workshops, EPA's Chris Heppy answered landowner questions
18 and concerns about total maximum daily loads.
19 A measure of trust between Heppy and the
20 landowners developed. Later, landowners helped Heppy assess
21 sediment loadings to the river. The final product was a
22 TMDL supported by local landowners.
23 I also founded and am currently president of the
24 Yager/Van Deusen Environmental Stewards, our acronym is YES.
25 Our mission statement is as follows: To ensure the

1 environmental integrity of our watershed while maintaining
2 our heritage and the economic sustainability of our
3 endeavors.
4 In December of 2000, YES was awarded a 271 Grant
5 from the Department of Fish and Game to undertake a
6 watershed inventory and restoration planning project for the
7 middle portion of the Van Deusen Basin. I've worked with
8 the Department of Fish and Game, as well as the firm of
9 Pacific Watershed Associates, in crafting and implementing
10 that proposal.
11 I believe that the future of managing the
12 watersheds of California will be far and away one of the
13 most critical and complex issues facing agencies, the
14 Legislature, landowners, and stakeholders over the next
15 several decades. I am committed to working proactively on
16 those issues.
17 I believe in collaborative efforts and on finding
18 middle ground. I welcome the opportunity to be part of the
19 solution.
20 I look forward to answering any questions that you
21 may have today regarding decisions made by the North Coast
22 Regional Water Quality Control Board since January of 2001,
23 which is when I started serving.
24 Thank you for your time.
25 And just for the record, the ranch on which I

1 live, it has been in my husband's family for five
2 generations, has no land holdings that drain into the
3 Freshwater watershed, and we have never had any business
4 dealings with Pacific Lumber Company.
5 Thank you.
6 SENATOR JOHNSON: Thank you.
7 Questions from Committee Members.
8 SENATOR KNIGHT: Move the nomination.
9 MS. MOORE: I do have an individual speaking on my
10 behalf today, sir.
11 SENATOR JOHNSON: Well, we've love to hear it.
12 MS. MOORE: Thank you.
13 SENATOR JOHNSON: In the interest of some balance.
14 SENATOR KNIGHT: Is that your husband?
15 MS. MOORE: No, my husband is not here, this is my
16 friend.
17 MR. MACON: I'll be very brief.
18 Mr. Vice-Chairman and Members of the Committee, thank you.
19 My name is Dan Macon. I am a consultant that has worked
20 with agricultural and conservation groups throughout
21 California, including in the North Coast region, and I am
22 honored to be here to speak in support of Dina Moore's
23 nomination to the North Coast Regional Water Quality and
24 Control Board.
25 Dina understands, in my experience, that economic

1 viability and environmental sustainability are two sides of
2 the same coin. And as you heard in her testimony, she's
3 worked with neighbors and with agencies in her region to
4 protect water quality in the watershed in which she resides,
5 and I think this will allow her to bring to the North Coast
6 Board a sense of collaboration and an understanding of the
7 importance of working landscapes in addressing water quality
8 issues throughout the state.
9 In my mind, Dina embodies a stewardship ethic that
10 is important to this board and important to other
11 environmental issues that we're dealing with all over. I
12 know you've received a number of letters in support from
13 folks that also had a difficult time making the seven-hour
14 drive down here, and I join them in urging you to confirm
15 her nomination.
16 Thank you.
17 SENATOR JOHNSON: Thank you, sir.
18 Senator Knight.
19 SENATOR KNIGHT: Move the nomination.
20 SENATOR ROMERO: I have a question.
21 SENATOR JOHNSON: A question. Go ahead. Senator
22 Romero for a question.
23 SENATOR ROMERO: Thank you.
24 Ms. Moore, some folks have raised the concerns
25 about potential conflicts of interest and how would you

1 balance potential conflict of interest with your membership
2 on the Water Quality Control Board, given that you are
3 involved in the timber industry? First of all, if you could
4 outline whether or not you do see it as a conflict, and
5 secondly, if you could detail what you would do?
6 MS. MOORE: I think that if there is a conflict,
7 for starters, we do have legal counsel. In fact, our legal
8 counsel is here today, and they, as I have learned since
9 January, are an important resource for us. And as I already
10 have asked legal counsel and will continue to rely on them
11 quite heavily, if there's an area upon which I am concerned
12 that I have a conflict of interest, I will ask them for
13 their guidance.
14 SENATOR ROMERO: Do you perceive any conflict of
15 interest, and can you respond to some of the concerns that
16 have been raised?
17 MS. MOORE: I guess I would have to ask
18 specifically what you're asking of. Conflict of interest
19 with regards to myself and Pacific Lumber Company, no, I do
20 not have a conflict of interest there, if you're asking
21 specifically about that timber company. We are a
22 neighboring landowner. I think Pacific Lumber Company
23 probably has multiple neighboring landowners. As I stated
24 earlier, we've never done business with Pacific Lumber
25 Company, that sort of thing. Being that we are in -- a part

1 of our business is in the timber business, my husband is a
2 licensed timber operator, we do manage the timber resource
3 on our ranch and our properties. If at any time the North
4 Coast Regional Water Quality Control Board does have an
5 action against a timber company that we currently have a
6 contract with, then I clearly need to ask legal counsel, and
7 clearly need to recuse myself, if that becomes an issue.
8 Absolutely.
9 SENATOR ROMERO: Thank you.
10 MS. MOORE: Thank you.
11 SENATOR JOHNSON: All right. There's been a
12 motion. Secretary call the role.
13 MS. WEBB: Senator Karnette.
14 Senator Knight.
15 SENATOR KNIGHT: Aye.
16 MS. WEBB: Knight Aye. Senator Romero.
17 Senator Johnson.
18 SENATOR JOHNSON: Aye.
19 MS. WEBB: Johnson Aye. Two to zero.
20 SENATOR JOHNSON: Can we make a motion on Mr. Hoy?
21 SENATOR KNIGHT: I made the motion earlier.
22 MS. WEBB: He did earlier, yes.
23 SENATOR JOHNSON: Okay. Call the role on that.
24 MS. WEBB: Senator Knight.
25 SENATOR KNIGHT: Aye.

1 MS. WEBB: Knight Aye. Senator Romero.
2 Senator Johnson.
3 SENATOR JOHNSON: Aye.
4 MS. WEBB: Johnson Aye. Two to zero.
5 SENATOR JOHNSON: All right. We'll place those
6 matters on call.
7 William J. Schumacher, Member of the California
8 Regional Water Quality Control Board, San Francisco Bay
9 Region.
10 Good afternoon, sir.
11 MR. SCHUMACHER: Good afternoon, Mr. Chairman.
12 Good afternoon, Committee Members. I thought I'd have
13 Senator Speier introduce me, but she's in meetings.
14 SENATOR JOHNSON: She's on her way.
15 MR. SCHUMACHER: Anyway, I'd like to say something
16 about myself. I have -- I live in San Francisco. I for
17 many years lived in San Mateo County where I was a police
18 officer, a prosecuting attorney in the D.A.'s office. I was
19 elected to the Jefferson Elementary School District, served
20 as Trustee and Chairman. I was elected to the city council,
21 served as a council member and mayor. I was elected to the
22 Board of Supervisors of San Mateo County and served three
23 times as its chair, and I left because of term limits that
24 we have imposed upon ourselves. I was just appointed to the
25 Regional Water Quality Control Board by the Governor in

1 November, and currently I sit on that agency.

2 I'd like to tell you something about myself --

3 oh --

4 SENATOR JOHNSON: Here you go. We've got to have

5 a flashy introduction.

6 SENATOR SPEIER: Well, Mr. Chairman, this won't be

7 flashy, but it's very sincere. I have known --

8 SENATOR KNIGHT: Is that what the flower's for?

9 SENATOR SPEIER: It will squirt at you in another

10 minute, Senator.

11 I've known former Supervisor Bill Schumacher for

12 over 20 years, and for six years we served on the San Mateo

13 County Board of Supervisors together. His career is one

14 that has been almost exclusively in public service as a

15 police officer, as a city councilman, as a school board

16 member, as a teacher at the community college in poly

17 science, and as a lawyer. He capped his public or political

18 career on the Board of Supervisors for 12 years.

19 During the six years that we served on the Board

20 of Supervisors, we agreed probably 75 percent on -- so there

21 were times when we did not. I can tell you that he has a

22 very agile mind, he has the scars of being in public life

23 for over 30 years to suggest that he knows how to take the

24 heat. He also knows how to stand his position, and there

25 may be some people in the audience who are friends of mine

as well who will be up here to oppose his nomination, and I regret that, but I can tell you that regardless of the comments you will hear, Mr. Schumacher will represent us well on the Regional Water Quality Board, and I have every belief that his service will bring pride to all of us in that position. He is I don't believe seeking public office any time soon, so serving as an appointee --

SENATOR JOHNSON: Well, that's certainly in his favor. I wonder if we could test your theory.

Is there anyone in opposition?

Can I have those people come forward and the same admonition as previously to keep your testimony brief and to the point and nonrepetitive.

MR. ALLAYAUD: Now?

SENATOR JOHNSON: Yes.

MR. ALLAYAUD: Okay.

SENATOR JOHNSON: Speak now or forever hold your peace.

MR. ALLAYAUD: I'm Bill Allayaud, I represent Sierra Club California. This is the first time we've appeared before you this year to oppose anyone. It's not that usual, and it's a -- it's a matter. This is a clear one, because we know we're never going to get Regional Water appointees who are perfect, that's okay. They are going to vote with us and against us sometimes. But this --

1 appointments to this regional board are very important.
2 We feel after the Coastal Commission, the State
3 Water Board, and the Regional Water Boards are the
4 preeminent environmental agencies in this state and we need
5 strong appointees to these boards from the governors -- from
6 the Governor. We just don't think Mr. Schumacher is that
7 person. We had a good long personal conversation, and I
8 respect his ability -- his willingness to serve the public
9 in a civic manner, that's great, but his record as a member
10 of the Board of Supervisors was not acceptable to most of
11 our membership around the Bay, and his short record with the
12 Regional Board is indicating those same problems, and we
13 regretfully must oppose his confirmation.
14 The following speakers have some specific examples
15 too.
16 MR. FEINSTEIN: Chairman and Senators, I'm Arthur
17 Feinstein, I'm the Executive Director of the Golden Gate
18 Audubon Society. And as the previous speaker has said, we
19 met with Mr. Schumacher to try and work out things. But Mr.
20 Schumacher does not seem to have a recognition of the
21 importance of the environmental issues that will be facing
22 him as a Regional Board Member. He's been a supervisor for
23 many years, and the voting record is long and the next
24 speaker will go into more detail about the number of votes,
25 but you are hard pressed to find an instance where he has

1 not voted against the environment in favor of some other
2 issue.
3 There are always reasons to vote against the
4 environment, but you would expect in the long term as a
5 supervisor in public office that occasionally you would find
6 the opportunity to find where everything worked together to
7 vote for it, and we're hard pressed to find those. The list
8 of the ones, the anti votes, are, as I said, extensive.
9 In his very first meeting at the Regional Water
10 Quality Control Board, I think Mr. Schumacher clearly
11 expressed his position on, for example, endangered species
12 in streams when he said in talking about the Red Legged
13 Frog, the San Francisco Garter Snake, which is perhaps the
14 most likely species to go extinct in the Bay Area, that's
15 what we hear from the Fish and Wildlife Service, and the
16 Callippe Butterfly. Well, he said, "Well, you see them
17 everywhere in my county." The implication being, he did not
18 say, so what's the fuss. But the implication was very clear
19 within the context of that meeting, why should we care.
20 Previous discussions in previous meetings, way
21 back when when he was talking about endangered species on
22 San Bruno Mountain and environmentalists were asking for
23 relief to this creature, he said, "Well, I didn't hear them
24 ask for the developer's oldest child," implying that -- you
25 know, asking for protection for the oldest species was a

1 battle on the same level as doing something like that.
2 I'm sure he was a great public servant. That's
3 not the question. The question now is, is he an appropriate
4 person to be on the Regional Water Quality Control whose
5 purview is our environmental health. His voting record says
6 no, his quotes say no, he's the wrong person for this job,
7 eminent as he might be in other roles.
8 So we ask you to look very seriously at this and
9 please reject his nomination. It's simply the wrong place
10 for Mr. Schumacher to be serving the public.
11 Thank you very much.
12 MS. SPEIER: Mr. Chairman, I have to go on to
13 another meeting. Can I just close my comments very briefly?
14 SENATOR JOHNSON: Absolutely.
15 MS. SPEIER: Thank you.
16 First of all, you need to know Bill Schumacher,
17 who is glib and will say things to be funny, and that
18 happened, a quote in the paper. That never happens to any
19 of us as we know. But I can also tell you that when it came
20 to protecting San Bruno Mountain, supporting the Habitat
21 Conservation Plan, which became a model for the nation, Bill
22 Schumacher did support that. It was acclaimed as being one
23 of the most far-reaching efforts to try and bring the
24 protection of an endangered species and housing at a similar
25 location. Many acres were set aside for the butterfly in an

1 effort to protect it and enhance its ability to procreate,
2 and as I understand it, they've done it very well and very
3 successfully in the interim.
4 So I just come here and wholeheartedly endorse his
5 appointment.
6 MR. SCHUMACHER: Thank you very much, Senator.
7 I would like to say --
8 CHAIRMAN BURTON: Just a minute.
9 MS. ROBERTS: Good afternoon, Members of the Rules
10 Committee, I'm Lennie Roberts. I'm speaking for the
11 Committee for Green Foothills. We are a membership
12 organization with a thousand members in San Mateo and Santa
13 Clara Counties and will celebrate our 40th anniversary next
14 year. I will be brief.
15 As a legislative advocate for San Mateo County
16 since 1978, I attend nearly all of the Board of Supervisors'
17 meetings and Planning Commission meetings at the county.
18 And I would estimate that conservatively I attended 300
19 meetings in the Board of Supervisors between 1980 and 1992
20 when Supervisor Schumacher was on the board. On nearly
21 every issue involving environmental protection, he was on
22 the wrong side. He was actually hostile to a number of
23 issues.
24 We have numerous endangered species issues and
25 wetlands and coastal protection issues in our county, and as

1 was brought up today, the Habitat Conservation Plan on San
2 Bruno Mountain was the first of it's kind and it was adopted
3 before I think Supervisor Schumacher was on the board, but
4 it was amended repeatedly by the board when he was on it.
5 Those were weakening amendments.
6 Often -- Senator Speier has spoken about Bill
7 Schumacher's style. As a member of the public, I saw this
8 style as a consistent irritant to people who came before the
9 Board of Supervisors, often interrupting people or inserting
10 opinions or asking challenging questions before they had a
11 chance to complete their presentation. This often rattled
12 people who are not used to appearing before a board, such as
13 the Supervisors. It was also fairly common for him to
14 challenge the staff in a, I would say, somewhat unfriendly
15 manner.
16 Our organization understands that diverse points
17 of view are healthy on a regional board, such as our
18 Regional Water Quality Control Board, but we believe that
19 the record that Supervisor Schumacher has had when he was
20 serving on the Board of Supervisors does not qualify him to
21 be confirmed by your Committee.
22 Thank you very much.
23 MR. SCHUMACHER: I'd like to just point out that I
24 was on the board for the Habitat Management and for the San
25 Bruno Mountain, we adopted that. I did have a problem with

1 some of the environmentalists. I wanted to put a county
2 golf course, and I used to get criticized from fellow
3 supervisors from around the Bay Area. They'd say we're the
4 only county that doesn't have a golf course. We had a
5 million dollars donated by Cecil Andrus under the Carter
6 Administration to build a golf course, and we attempted to
7 do that, I really pushed it. I failed. We lost to a Blind
8 Harvestman Spider that lives in the cracks of the serpentine
9 rock.
10 SENATOR KNIGHT: A what?
11 MR. SCHUMACHER: A Blind Harvestman Spider.
12 SENATOR KNIGHT: Well, there is a spider?
13 MR. SCHUMACHER: I guess. It's a mite. It's only
14 a couple of millimeters long.
15 But anyway, I was unsuccessful in pushing the golf
16 course, and that was one of my problems with the community.
17 I did vote with the environmentalists on many issues.
18 Particularly with Lennie Roberts' issue here, over at the --
19 let's see, it was on the coast, Ano Nuevo, and she remembers
20 that, I'm sure. And I supported her position on that. Many
21 positions I've supported with the environmentalists. Just
22 that when it comes to, sometimes you have to make a
23 decision, and this is a decision as a Supervisor.
24 I supported business and labor, because many times
25 during the 80's when I was on the board, we were having

1 somewhat of a depression, and here we had the compromise on
2 San Bruno Mountain, we saved it for the butterfly. A couple
3 of butterflies live on the top of the mountain, and the
4 agreement was to build around the base for homes. And the
5 developer made a remark -- I did pop off. I do pop off
6 periodically. But I said, you know, he went broke with the
7 delay on trying to build the houses. So he went -- he did
8 -- he went bankrupt on it. Somebody else is currently
9 developing that particular segment. But at the time, we
10 needed jobs, we needed people put to work, we had the
11 agreement, and they still wanted to delay the implementation
12 of that agreement.
13 And so I just have a -- you know, I think this is
14 in the area of water. I have served as a -- on the three-
15 member board, and I dominated that board in the sense that
16 it was the north San Mateo County Sanitation. So I had to
17 fire the manager, the consultant, we had to clean up the
18 odor, we had to clean up the effluent, we had to work with
19 San Francisco and -- in, you know, getting things in
20 progress.
21 I served on the San Mateo County water agency,
22 dealing again with San Francisco and Hetch Hetchy water. I
23 have some experience in that. I have experience in
24 enforcement in the area of enforcing the law, and I think we
25 have some slobs out there that do throw things, nonpollution

1 -- I mean nonsource pollution. We have to -- we have a lot
2 of work to do, and we have to clean up, and we have to
3 educate our public not to be throwing stuff out, not to be
4 throwing stuff in the sewers.
5 We have many things we've got to do in dealing
6 with our sanitation agencies, with our water reclamation,
7 with -- it's real challenging. I think we have a great
8 staff for the San Francisco Bay Area Water Quality Agency
9 and I'm impressed with it, and I'd like to work with our
10 fellow board members. And I respectfully ask for your vote
11 for appointment -- for confirmation.
12 CHAIRMAN BURTON: Senator Johnson.
13 SENATOR JOHNSON: No questions.
14 CHAIRMAN BURTON: Senator Romero.
15 SENATOR ROMERO: No questions.
16 CHAIRMAN BURTON: Senator Knight.
17 SENATOR KNIGHT: No questions, and I'll move the
18 nomination.
19 CHAIRMAN BURTON: Senator Karnette.
20 SENATOR KNIGHT: She's not here.
21 CHAIRMAN BURTON: What are you going to do, in
22 other words, you gave your point of view about San Bruno
23 Mountain and the butterfly. If basically the endangered
24 species, if they call for doing something, I mean if you're
25 going to put jobs, which I support, ahead of everything,

1 then you may as well let Standard Oil put a bunch of stuff
2 into the bay, because, in other words, where are you going
3 to -- I mean, sometimes it's a close call and I don't fully
4 understand the importance of the Snail Darter or the
5 butterfly or the spider to the whole ecology whatever of the
6 Earth, but people who do understand it explain it to me and
7 I still don't kind of get it, but I mean I understand the
8 importance. And where are you going to come down, because
9 you can carry that, you know, well, we would shut down a
10 plant and cost 1,500 jobs or we can let them keep dumping
11 the sludge into the bay. I think you're going to be faced
12 with those choices. And I mean, it's easy to denigrate, you
13 know, the spider or butterfly or Snail Darter, or whatever
14 dam that held up a long time ago, but, you know, you're
15 going to get in a position where most of the pollution in
16 the bay, I guess -- or in the water you're going to have the
17 MTBE because it's in the boats or whatever it is, or it's
18 going to come from source, you know, in industrial
19 pollution, and if you shut them down, because you might have
20 to, it's going to a ton of jobs. But you have to be -- I
21 think a responsibility is to -- it really comes to that
22 thing to be able to make that choice.
23 MR. SCHUMACHER: Oh, no, you're at the cutting
24 edge. This is where science and public health, you know,
25 come together. In other words, we would like zero

1 pollution, zero denigration of our air and water, and the
2 question is that setting standards that can be achievable by
3 science, and if it can't be, and it's still a public health
4 problem, then it has to stop.
5 Public health has to come before the -- I mean,
6 that's a different issue than some of the -- on San Bruno
7 Mountain we did preserve the butterfly and all we wanted to
8 do was fulfill the agreement we had with the environmental
9 community to build around the base of the mountain, and then
10 they kind of -- they wanted to stop that also. That had
11 nothing to do with the butterfly and it just was kind of a
12 no-growth issue. But public health has to come first when
13 it comes to, you know, the air and the water, particularly
14 the water. We have to have drinkable water, we can't have
15 nonpotable water.
16 CHAIRMAN BURTON: Is all pollution in the bay
17 public health related?
18 MR. SCHUMACHER: No, not all --
19 CHAIRMAN BURTON: I don't mean like just a little
20 bit, but I mean I think some of it has an effect -- it may
21 not have an effect on people, but have an effect on the
22 species that somehow are important in the big picture?
23 MR. SCHUMACHER: Oh, it is. It is important. I
24 mean like San Francisco spent billions of dollars to stop,
25 you know, putting in effluent into the bay. Now they

1 discharge into the ocean, they've got secondary treatment
2 plants. I mean, these things have to come about even though
3 they're expensive. I mean, we have to -- you know, we've
4 got to preserve the bay and we have the -- the wetlands are
5 another issue. We have to see that we have the wetlands.
6 Wetlands are a part of nature's way of cleaning water, and
7 cleaning and providing for species, and we need the
8 wetlands, and we have a problem with wetlands lost around
9 the bay.
10 CHAIRMAN BURTON: Well, I've known you for a long
11 time and Senator Speier served with me for a long time, and
12 her opinion, you know, counts a great deal with me. I would
13 hope that you take the opposition to heart and don't degrade
14 it back to the little butterflies on San Bruno Mountain and,
15 you know, some houses down below, but look at this is an
16 issue. Because your responsibility here is --
17 MR. SCHUMACHER: Is the water.
18 CHAIRMAN BURTON: -- A, to the economy of this
19 county, not to the building trades, it's to the water. And
20 that's where your responsibility is and that's what we would
21 hope that you would exercise.
22 Call the role.
23 MS. WEBB: Senator Knight.
24 SENATOR KNIGHT: Aye.
25 MS. WEBB: Knight Aye. Senator Romero.

1 SENATOR ROMERO: Aye.
2 MS. WEBB: Romero Aye. Senator Johnson.
3 SENATOR JOHNSON: Aye.
4 MS. WEBB: Johnson Aye. Senator Burton.
5 CHAIRMAN BURTON: Aye.
6 MS. WEBB: Burton Aye. Four to zero.
7 MR. SCHUMACHER: Thank you very much.
8 SENATOR JOHNSON: You didn't call the two
9 previous.
10 CHAIRMAN BURTON: Why don't you call the two
11 previous ones.
12 MS. WEBB: Okay. Mr. Hoy. Senator Burton.
13 CHAIRMAN BURTON: Aye.
14 MS. WEBB: Burton Aye. That's three to zero.
15 SENATOR ROMERO: Romero Aye.
16 MS. WEBB: And Romero Aye. Four to zero.
17 Moore. Senator Burton.
18 CHAIRMAN BURTON: Aye.
19 MS. WEBB: Burton Aye. That's three to zero.
20 And Senator Romero makes it four to zero.
21 (Thereupon Senator Karnette returned to
22 the Committee Room and the roll was
23 opened for appointees William Hoy, Dina
24 Moore, William Schumacher and Senator
25 Karnette added her aye vote, making the

vote five to zero.)

(Thereupon the proceedings of the Senate Rules Committee were concluded at 4:40 p.m. on August 27, 2001.)

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I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing Senate Rules Committee proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

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STATE OF CALIFORNIA

HEARING

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2:30 P.M.

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APPEARANCES

MEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice-Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

DR. TOM HAINES, Pacific College of Oriental Medicine

ELIZABETH GOLDBLATT, Council of Colleges of Acupuncture and Oriental Medicine

LIXIN HUANG, American College of Traditional Chinese Medicine

STEVE GIVEN, Bastyr University

TA FANG CHEN, CAMA, CAOMA

BRIAN CHEZ CHANG LOH, United California Practitioners of Chinese Medicine

JOHN ZHENG DU, California Certified Acupuncture Association

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Witnesses in Opposition:

1 PROCEEDINGS

2 CHAIRMAN BURTON: Gary Klapman, Governor's
3 appointment to the Acupuncture Board.
4 DR. KLAPMAN: Acupuncture is becoming very
5 important and an emerging force in healthcare in California.
6 I have been practicing acupuncture for nearly 18 years, and
7 I also practice emergency medicine. I've been on the
8 Acupuncture Board since January, and this issue before us
9 deals with some of the contentious issues before the
10 Acupuncture Board and the acupuncture community.
11 As more and more people are relying on
12 acupuncture, not only as an adjunct to their western medical
13 care, but many people are relying on oriental medicine as
14 primary care. And as people are relying more on
15 acupuncture, there is more need for acupuncturists. As
16 there is a need for more acupuncturists, there is need for
17 educational reforms. One of the issues before the board is
18 the issue of a curriculum, and the apparent need in the
19 acupuncture community to raise the standards.
20 The previous acupuncture board passed a resolution
21 to increase the numbers of hours required to 3,200 hours.
22 This resolution never made it past the Department of
23 Consumer Affairs, it was sent back, and when the new board
24 came on and becoming familiar with it, the resolution died.
25 Initially this resolution for 3,200 hours never really had

1 an understanding of what hours were to represent.
2 Presently the acupuncture board has established a
3 task force. The purpose of the task force is to establish
4 outcomes and competencies for entry-level practitioners.
5 Once those competencies are recognized, the next object is
6 to figure out how many hours it will take to fulfill those
7 competencies. So this is basically a way of directing the
8 curriculum issue through the front door, recognizing the
9 need where these hours really are directed. And I think it
10 would be much the same way of passing a budget bill without
11 having an understanding of where the money was directed. In
12 this case it's an issue of developing hours without having a
13 recognition about where those hours are to be recognized.
14 Presently, the task force, as I mentioned, has had
15 a meeting and it has come under so far some optimistic
16 outcome. We have possibly another couple of meetings in
17 order to finalize the recommendations --
18 CHAIRMAN BURTON: Is that the task force has had
19 one meeting?
20 DR. KLAPMAN: We've had one meeting so far.
21 CHAIRMAN BURTON: So you may well have more?
22 DR. KLAPMAN: We probably will have two more.
23 CHAIRMAN BURTON: Or you may well not?
24 DR. KLAPMAN: Oh, we definitely will have one
25 more. It's already scheduled for next month.

1 CHAIRMAN BURTON: And then when the old board
2 designed a standard, they started in the mid '90s when they
3 discussed this issue, and then they came up with the
4 recommendation in 2000 to go for these hours, right?
5 DR. KLAPMAN: Correct.
6 CHAIRMAN BURTON: So they must have given either
7 some consideration, or forgot about it for five or six
8 years, but they must have given some consideration to it.
9 So they had come up with what they determined to be the
10 proper number of hours in preparation, and the new board, if
11 it so desired, could have just determined whether or not
12 they wanted to mandate the hours or not, rather than just go
13 back to square one.
14 DR. KLAPMAN: The people on the board -- I
15 actually made a resolution at the last meeting before this
16 resolution was going to die, and the resolution that I had
17 proposed was to make a 2,800 hour compromise. There was no
18 one on the the board that felt comfortable enough with
19 understanding the issues well enough to --
20 CHAIRMAN BURTON: Then what are they doing on the
21 board, if they don't understand the issues of acupuncture?
22 DR. KLAPMAN: Well, this is a brand-new board.
23 CHAIRMAN BURTON: Well, I know that, but they
24 ought to stand -- they may not understand the institute of
25 board, but they ought to understand acupuncture, they ought

1 to understand the discipline, and once you're put there to
2 either regulate or implement, if they don't understand the
3 issue enough to figure out the aggregate, and this we don't
4 know enough to know how many hours there are. I mean, it's
5 got nothing to -- in other words, what the heck are they
6 doing on the board?
7 DR. KLAPMAN: Well, I think the confusing part is
8 the fact that the 3,200 hours was not very well delineated
9 as to where those hours should go.
10 CHAIRMAN BURTON: And, therefore, we started with
11 the beginning that the earlier group, okay, over a period of
12 years, because they started thinking about this in the mid
13 '90s, and in 2000, after thinking about it for quite a
14 while, and I assume discussing it for quite a while, came up
15 with the amount of hours. And it would seem to me that it
16 would have made sense if there was a question about, okay,
17 we now have these hours, how many of them go to this, how
18 many of them go to that, how many of them go to something
19 else, rather than going back to square one and figure out
20 the number of hours.
21 I mean, in other words, if the question was how
22 many hours in each segment of acupuncture should they study,
23 and I don't know much about, you know, what the various
24 elements are, you know, whether it's some herbal medicines,
25 whether it's this or whether it's that, but it seemed that

1 they could have and should have maybe confined themselves to
2 and out of these X new hours, so much should be devoted to
3 this, so much should be devoted to that, so much should be
4 devoted to the other thing, it seems to me.
5 DR. KLAPMAN: There seems to be a bit of an
6 arbitrary estimation, because after the board made this
7 resolution, they then set up a task force to try to
8 understand where these hours should go.
9 CHAIRMAN BURTON: They did that with the division
10 last year, they were increasing traditional oriental
11 medicine 140 hours; clinical, 285; western science, 192;
12 herbal, which we hope to get the sales tax off of some day,
13 150; ethics, 35; and then I guess optional, another 50. So
14 they did have something in.
15 DR. KLAPMAN: They did delineate in some more
16 generalized fashion. One of the difficulties I think --
17 CHAIRMAN BURTON: Well, what, were you guys going
18 to dot every I and cross every T? I mean traditional
19 oriental medicine, clinical, herbal, ethics, I mean, you
20 know, like take Ethics 101 and Herbal 92.2? I mean, I'm
21 missing -- I am missing the situation, and my problem is
22 that the district that I represent, and I started being made
23 aware of apparent legislation of acupuncture a long, long
24 time ago, back in the early '70s, and, you know, so I'm kind
25 of much of their opinion, because they brought me to the

1 dance, so to speak. And it would seem -- in other words,
2 and I don't know, if you don't know what the reason was
3 either for the delay or the stall, when first from your
4 testimony it was my fault not yours, I was led to believe,
5 well they just upped the hours, 852, and had to figure out
6 which courses to take, now -- and they tell what areas they
7 should do, and they just didn't delineate the courses, so
8 you had to go back and figure out whether the hours were
9 right? You might have wanted to go back and define, you
10 know, English 6B and 6C, but, I mean, you went back to
11 square -- not you, the board went back to square one.
12 DR. KLAPMAN: I think that's the way that it
13 looks.
14 CHAIRMAN BURTON: No, that's the way it is.
15 DR. KLAPMAN: There was a difficulty as well in
16 the public interest portion of the resolution, as well as
17 some of the fiscal issues. Fiscal issues that would
18 confront schools, students, and the public, to which the
19 added cost of the hours would incur. These apparently were
20 not adequately represented on the resolution proposal, and
21 that's why the Department of Consumer Affairs apparently
22 returned it to the board.
23 CHAIRMAN BURTON: Maybe they could have got those
24 people to give everybody an acupuncture certificate or one
25 of those things. Could you comment a bit -- Senator

1 Johnson.

2 SENATOR JOHNSON: Thank you, Mr. Chairman.

3 I should begin by saying I've been asking in
4 recent weeks nominees who are appointees that appear before
5 us a series of questions. So I intend to ask you the same
6 series of questions. Number one, when you were granted this
7 appointment, what was communicated to you by the Governor or
8 the Governor's office with respect to reporting requirements
9 that you had in terms of the Statement of Economic Interest
10 and any potential conflict?

11 DR. KLAPMAN: When I became a board member, I
12 received a large packet --

13 SENATOR JOHNSON: No, let's back up. The question
14 was, at the time of your appointment, before you were
15 appointed, did anyone from the -- did the Governor or anyone
16 speaking on the Governor's behalf ask you questions about
17 any potential conflicts of interest that you might have, the
18 first question?

19 DR. KLAPMAN: I believe they did, because I talked
20 to someone from the Governor's office who asked me some
21 general questions, if I had anything that I would be ashamed
22 of or would be uncomfortable at exposing.

23 SENATOR JOHNSON: Did the Governor or anyone from
24 the Governor's office talk to you about the legal
25 requirements that you would have once you were granted this

1 appointment? Did you file a Statement of Economic Interest?
2 DR. KLAPMAN: No, I don't have any recollection of
3 that at all.
4 SENATOR JOHNSON: Did, apart from asking if there
5 was anything in your background that you might be ashamed
6 of, did the Governor or anyone in the Governor's office talk
7 to you in general about the moral and ethical tone of this
8 administration? You know, I've read in the papers that the
9 Governor thinks that the Legislature, all of his appointees,
10 whether they're judges or whatever, you know, are to carry
11 out or enact his vision. So was there any discussion of an
12 ethical component in the Governor's vision?
13 DR. KLAPMAN: I don't recall anybody -- I don't
14 recall anybody trying to influence my way of looking at
15 things or seeing things, or wanting to espouse a certain
16 philosophy.
17 SENATOR JOHNSON: No, no, no. Did the Governor or
18 anyone in the Governor's office say to you, you know, this
19 administration is intent on a policy of the highest ethical
20 standards, full compliance, not only with the letter of the
21 law, but the spirit of the law? Did anyone say anything
22 remotely like that to you?
23 DR. KLAPMAN: I don't recall that.
24 SENATOR JOHNSON: Okay. All right. I understand
25 that when you filed your Statement of Economic Interest,

1 and, again, I'm not alleging that any conflict exists. I am
2 alleging that there was a legal requirement to file that
3 within 30 days, and you filed it seven months late. Could
4 you tell us why?
5 DR. KLAPMAN: Indeed, I'm guilty of the negligence
6 and the procrastination of filing this late. There really
7 isn't an excuse that I have that would justify that kind of
8 negligence. I think that as nothing exists in isolation,
9 there are some issues in my life that might be of interest
10 to the Members here to perhaps put that somewhat in
11 perspective. Two issues come to mind, and one is the
12 hectic, busy life that I have on the one hand, and number
13 two, my lack of experience in the political process and the
14 political environment that I found myself in.
15 SENATOR JOHNSON: Wouldn't it seem logical to you,
16 you've gone through a vetting process with the Governor's
17 office and he's asked you if you were interested in serving,
18 and asked if there was anything in your background that
19 might prove embarrassing to you, does it strike you that
20 there was some obligation on the part of the Governor's
21 office, knowing that you were not experienced to not serve
22 on such a board and might not be familiar with the legal
23 requirements and might not be aware of the importance of
24 filing those documents, I mean, shouldn't you have received
25 some advice?

1 DR. KLAPMAN: Well, I did receive a packet of
2 materials, and this was within that packet of materials. I
3 did never receive some spoken advice, and I agree with you,
4 given as I'm learning, the fence is blind in the political
5 world here that I had certainly did not understand the
6 importance or significance of filing these in a timely
7 fashion.
8 SENATOR JOHNSON: Didn't you get a clue when in
9 the spring you received a letter from the Fair Political
10 Practices Commission saying that you were then some months
11 late and that you had to pay a hundred dollar fine, didn't
12 that sort of trigger something in your mind that maybe this
13 was more than just something that was in a packet, like a,
14 you know, return-to-school packet that a kid takes home to
15 his parent?
16 DR. KLAPMAN: Again, I think it should have
17 clicked more of a responsive action on my part, but it
18 didn't, as of course history has shown here. And I
19 apologize for my -- it really is negligence on my part, that
20 is, I don't have an excuse for it.
21 SENATOR JOHNSON: I appreciate that, and I'm sure
22 the Members of the Committee appreciate that. I said at the
23 outset these are a series of questions I've been asking a
24 number of appointees, and, Mr. Chairman, I think there has
25 been a very clear pattern thus far that the administration

1 has done little or nothing to talk to their appointees about
2 either the legal requirements or just in general the ethical
3 requirements or a standard of ethics. And while this --
4 while you may not pose a problem in that respect, clearly
5 there have been people who have been hired by this
6 administration, and put in positions of authority by this
7 administration, where those kinds of questions did matter,
8 and put contracts that were entered into at risk and so on.
9 I don't know, short of just beginning to oppose
10 these nominees who have not filed their Statements of
11 Economic Interest in a timely fashion, how to get the
12 attention of the administration so that they begin -- and
13 I've described it as being, I believe, ethically tone deaf.
14 They have an obligation, it seems to me, to not only advise
15 nominees of the requirements of the law and to underscore
16 the importance of complying with the law, but they have an
17 obligation to set a tone from the very beginning and say
18 these are the kinds of standards we expect from anyone
19 appointed by this administration.
20 Thank you, Sir.
21 DR. KLAPMAN: And if you wouldn't mind, I have one
22 other thing in that regard, and that is that there was
23 really not anything I was attempting to hide in my delay.
24 SENATOR JOHNSON: Sir, I don't allege that at all.
25 I don't allege that at all. But something is wrong when you

1 begin to see a very clear pattern that everyone who is
2 appointed, until I started asking these questions at least,
3 has been left to their own devices. They may have gotten a
4 form in a packet, you know, a packet of other materials. I
5 presume that that was the case with you, there was a packet
6 of materials concerning the board and its activities,
7 bringing you up to speed, and somewhere in there was this
8 form, oh, by the way, you're supposed to fill this out, but
9 that no one has unscored the importance of that. And it
10 goes beyond just the technical requirements of the law, it
11 goes to setting the tone and saying we expect all our
12 appointees to meet this kind of standard. I'm not alleging
13 that you had anything to hide.
14 Thank you.
15 CHAIRMAN BURTON: Senator Karnette.
16 SENATOR KARNETTE: No questions.
17 CHAIRMAN BURTON: Senator Romero.
18 SENATOR ROMERO: No questions.
19 CHAIRMAN BURTON: Senator Knight?
20 SENATOR KNIGHT: Well, I was just going to ask if
21 you're aware now of what the FPPC is and what their function
22 is and how important it is to recognize a letter from the
23 FPPC?
24 DR. KLAPMAN: Well, I have to say that I am being
25 educated quickly, and I am appreciating the importance of

1 things that I'm finding in the political world. And I
2 appreciate the degree to which they pursue them.
3 CHAIRMAN BURTON: We received your name December
4 20th of the year 2000. We sent a letter January 5th, 2001.
5 We got no response to that letter, and no response to phone
6 calls for six months. We then asked the Governor's office
7 to get the information that we requested. What was the
8 problem in either responding to our letters and phone calls?
9 Did you get the phone calls, did you get the letter? And we
10 can't do anything on hearings until we get certain
11 information, and it was like six months, and as we attempt
12 to cooperate with the Governor's office, we contacted, I
13 think, Mr. Voit and finally contacted you, to finally fill
14 out -- what was the problem?
15 DR. KLAPMAN: I think, and perhaps understanding
16 my side a bit, if I tell you a little bit about me. I
17 practice emergency medicine about four days a week. I'm on
18 staff at four different hospitals. I also have an
19 acupuncture practice two days a week. I have two sons and a
20 wife that I support, not only financially, but in person.
21 I'm presently studying for board exams, recertifying board
22 exams, in early November, which are required every ten years
23 in my profession. I'm also during all that schedule trying
24 to keep myself somewhat healthy, and I do various things to
25 try to do this. So my schedule and my life is very

1 squeezed, and I'm sure that in some ways it's no different
2 than any of your own.
3 And one of the things that I do on a day-to-day
4 basis is to prioritize what is -- what I have to do, that I
5 need to do, what is good for me, what is not good for me,
6 and this is one of those issues that I never realized the
7 importance or significance of, and so my procrastination or
8 my negligence of it, again, it's not an excuse for it, it's
9 just negligent.
10 CHAIRMAN BURTON: Which kind of begs the question,
11 how are you going to find time to serve on the board, if you
12 didn't have time to answer the phone call or look at the
13 letter, and at least call someone and say, I got this
14 letter, what's this about? It is kind of humbling for us to
15 realize where we fit in the scheme of things.
16 DR. KLAPMAN: Well, I have been serving on the
17 board since January, which is another thing I forgot to
18 mention in regard to everything else --
19 CHAIRMAN BURTON: Did you ever think of talking to
20 the Executive Director of the board and say, you know, I got
21 this letter, I'm getting these phone calls, is this
22 something I should do, something I should worry about?
23 DR. KLAPMAN: In hindsight, certainly that would
24 have been the obvious course.
25 CHAIRMAN BURTON: Hindsight is a cruel thing.

1 Well, that's, you know, something else that -- this is not
2 to you, this is over here, but it maybe we also want to have
3 the secretaries of or the directors of various commissions
4 have a little, what would you call it, indoctrination of
5 people that come in. And you would think that Senator
6 Neilson's wife might have figured that one out. But, I
7 mean, we ought to tell all of the -- either the departments
8 or the cabinets that they ought to do that, because -- you
9 know, part of the problem was, you know, as you say your
10 negligence, part of the problem in the eyes of some
11 Committee members is the negligence on the part of the
12 administration when they appoint people and tell them that
13 certain things are expected, especially as press reports
14 come out.
15 Witnesses in support.
16 People are nodding their heads. If you are in
17 support, would you come forward, please.
18 Well, there is, you know -- feel free to use the
19 front as well.
20 DR. HAINES: Yes, my name is Dr. Tom Haines, and
21 I'm Academic Director for Pacific College of Oriental
22 Medicine. It's the largest O.M. medical college in the
23 United States. We have campuses in San Diego, New York, and
24 Chicago. I've been working in this field for the past five
25 years, and working with the Acupuncture Board in a very

1 close sense.

2 The schools are primarily in the middle of the
3 issue of the hours, and our hours have regularly gone up. I
4 think the State's requirement's around twenty four, twenty
5 five hundred hours. The schools on average are about twenty
6 eight, twenty nine hundred hours. So we've been voluntarily
7 raising the hours, and those hourly raises are generally due
8 to perceived need within the field of acupuncture as the
9 medicine becomes more available to us.

10 Fifteen years ago, twenty years ago, there was
11 very little of the medicine in our language, very little of
12 the scholarly aspects of the medicine available in this
13 country. Over the last 15, 20 years, that's done a dramatic
14 change in a very rapid fashion. And the medicine has been
15 embraced by the consumer, it will not go away, it works. It
16 works in a lot of ways of our culture, it relieves stress
17 reduction, et cetera. It's a very good medicine.

18 What we're trying to do in the schools, however,
19 is to get people on the Acupuncture Board that understand
20 the educational process. As the Board is primarily driven
21 by practitioners, primarily people of asian descent, they do
22 not have the awareness of the educational processes in this
23 country. As the medicine becomes more and more important to
24 us in this country, there's going to be more and more
25 integration. It's already becoming very close to

1 mainstream.

2 The task force that Gary is now in charge of is a

3 very important part of this process in the state of

4 California. We're pretty much to the point now where the

5 hours have pretty much been identified for the last four or

6 five years. It's now where the placement of those hours

7 really go. The documents you had, Senator Burton, was

8 really from the profession, it was not a document generated

9 by the schools, which are the people that understand

10 curriculum.

11 CHAIRMAN BURTON: I don't know, the document I

12 have is from the Acupuncture Board myself, so.

13 DR. HAINES: It's a document that was given to the

14 Acupuncture Board by --

15 CHAIRMAN BURTON: The Acupuncture Board's Initial

16 Statement of Reasons. It's the Acupuncture Board.

17 DR. HAINES: Yes. And it was generated not

18 through the schools, but through the profession. And that

19 was a document that was submitted for showing need, which

20 was not accepted, simply because --

21 CHAIRMAN BURTON: No, it was accepted by the

22 people that did it, and then it was rejected upstairs by

23 people who probably knew as much about acupuncture as I do.

24 DR. HAINES: Or myself, in many cases.

25 CHAIRMAN BURTON: Well, I hope you know something

1 about it, you're holding yourself out as an expert.
2 DR. HAINES: I'm an expert in educational
3 administration.
4 CHAIRMAN BURTON: Of acupuncture or just
5 generally?
6 DR. HAINES: Educational administration for the
7 last 35 years in higher education.
8 CHAIRMAN BURTON: So you know nothing about
9 acupuncture?
10 DR. HAINES: I wouldn't know where to put a
11 needle.
12 CHAIRMAN BURTON: Then may I ask a question, why
13 are we talking to each other?
14 DR. HAINES: Basically, I'm trying to support Gary
15 Klapman for being on the Board because of the necessary
16 dynamics to get this medicine integrated into our culture.
17 And as a school curriculum person, I'm speaking on his
18 behalf of understanding the curriculum process and not to
19 put the horse before the cart. If you identify
20 competencies, then you put hours to those competencies.
21 CHAIRMAN BURTON: Well, I thought they did, and
22 then it was a question of -- as I read it, it would be a
23 question of whether you want to increase traditional
24 oriental medicine 140 hours and clinical, 285, or vice
25 versa, and split the difference. Which in my judgement is

1 the way they probably should have gone, instead of going
2 back to square one, because it was five years that the old
3 board was sort of kicking this around, and, as you know,
4 since about 1985, different legislative acts have expanded
5 acupuncture. I remember when it started, like you had to do
6 it under the supervision of an M.D.
7 DR. HAINES: Yes.
8 CHAIRMAN BURTON: And so things have changed a
9 great deal since the '70s, but anyway.
10 Yes, ma'am.
11 MS. GOLDBLATT: Good afternoon, Mr. Chairman and
12 Members of the Committee.
13 My name is Liz Goldblatt and I'm president of an
14 organization that's called the Council of Colleges of
15 Acupuncture and Oriental Medicine, and we represent the
16 accredited colleges and candidate colleges here in
17 California, as well as the -- over a dozen out-of-state
18 colleges of acupuncture and oriental medicine that are what
19 are called California approved.
20 Actually, I had my first acupuncture treatment in
21 San Francisco where I was born. I think it was in the late
22 '60s, so I've been involved with this medicine for a long
23 time, and I've been president of one of the colleges for
24 about 13 years now.
25 As colleges, we are here to support the nomination

1 of Dr. Gary Klapman, and this is because of for two reasons.
2 One, is he is a physician, and he's an acupuncturist. And
3 he also has expertise and understanding of both higher
4 education in general, as well as acupuncture and oriental
5 medicine in the United States.
6 And this board is currently grappling with
7 educational issues in the United States. And we believe as
8 colleges, that it's very important to have a balance on this
9 board, both practitioners from Asia, which is where the
10 roots of our medicine come from, as well as practitioners
11 trained in this country and those that have expertise in our
12 medicine in this country, so they understand how higher
13 education is being developed, in terms of our field in the
14 United States, which is different than how it evolved --
15 CHAIRMAN BURTON: Who did this -- at the beginning
16 did the original training of, I would guess, acupuncturists
17 when they -- I mean, were they like educated in China and in
18 Asia where acupuncture started, or were they educated -- I
19 mean who were the original, you know, people that taught?
20 MS. GOLDBLATT: It's my understanding, and I don't
21 quite date back to the earliest schools, but that some of
22 the earliest teachers in this country are certainly from
23 Asia.
24 CHAIRMAN BURTON: Yes.
25 MS. GOLDBLATT: Yes. And the colleges have now

1 been around, actually, since the late '70s and the early
2 '80s. Our accreditation commission was recognized by the
3 United States Department of Education in '82, and our
4 council formed in '82. We had a national certification
5 commission that was created in '82. And the issue of hours,
6 I think, is what you brought up, Senator Burton, earlier,
7 and I think the reason we are all here today in a sense is
8 that it is a contentious issue. There is not a unanimous
9 agreement in our field about that particular area. We now
10 have --
11 CHAIRMAN BURTON: And it was made --
12 MS. GOLDBLATT: Yes.
13 CHAIRMAN BURTON: Excuse me for interrupting.
14 MS. GOLDBLATT: Sure.
15 CHAIRMAN BURTON: It seems to me it was made
16 contentious when the Department of Consumer Affairs,
17 Acupuncturist Lot, I assume, overruled the Acupuncture Board
18 that spent some years trying to come up with what they
19 thought was an adequate number of hours for the profession
20 whose duties or responsibilities were enlarged statutorily.
21 So I mean, I don't remember there being contention when the
22 board -- at the board level when they did this, the
23 contention came -- the Department of Consumer Affairs
24 decided they wanted them to start over.
25 MS. GOLDBLATT: No, actually, all the colleges,

1 except one, opposed this raise in hours, and that is on the
2 record.
3 CHAIRMAN BURTON: They did?
4 MS. GOLDBLATT: Yes, we did. And the main reason
5 for that is, is it's rather complicated and if you'd like, I
6 can try and give a very simple explanation of it. But right
7 now, we are accredited at the master's degree, and I'm sure
8 all of you familiar there with higher education, a 2,600
9 master's degree is actually a very long master's degree in
10 itself. And our field has been working for ten years to
11 develop what we are calling it, it's a credible doctoral
12 degree, and that degree will be a minimum of 4,000 hours.
13 There's a lot of contentiousness in the field of what entry
14 level will be, will it be the master's degree, will it be
15 the doctor degree. Some practitioners have one view, other
16 practitioners have another view, but the hour issue is a
17 very contentious issue, and we believe that the
18 practitioners and the colleges have not yet reached a
19 consensus. It is our sense and my -- I'm now a participant
20 on the educational task force, and what we are moving
21 towards as educators, as practitioners, sitting and working
22 together, is we are looking at what are competencies and
23 objectives, which is what you first looked at in education.
24 And then you look at if the hours are appropriate.
25 Excuse me.

1 SENATOR JOHNSON: Mr. Chairman, I wonder if I
2 could ask the witness and the previous witness as well a
3 simple question. How long have you known the nominee? How
4 and in what context have you known him? I'm not interested
5 in resolving these issues.
6 MS. GOLDBLATT: All right.
7 SENATOR JOHNSON: I want to know about this
8 gentleman's qualifications, and since you've come up to tell
9 me about his qualifications, I want to know why you're
10 qualified to have an opinion on his qualifications?
11 MS. GOLDBLATT: Thank you.
12 SENATOR JOHNSON: So if you'd just tell how long
13 have you known him and in what context?
14 MS. GOLDBLATT: I've known Dr. Klapman for about
15 two years, and when we had heard that there was going to be
16 a vacancy on the board, I contacted a number of colleges
17 throughout the United States, if they knew of someone in
18 California who was familiar with higher education, who was
19 an acupuncturist, and if they also might know of a
20 physician, because as Dr. Haines was mentioning, the field
21 of our medicine is moving towards integrated medicine, and
22 having someone on the board that was an M.D. we also thought
23 would be very important.
24 We actually also thought it would be beneficial if
25 the person was not politically active and I'm afraid in some

1 ways that perhaps has worked against Dr. Klapman. But
2 this -- the recommendation that came from Barbara Eldrick,
3 who is the vice-president of the Council of Colleges on
4 which I sit, has known Dr. Klapman for over a decade, and he
5 came with the highest of recommendations, in terms of his
6 understanding of the field of acupuncture and oriental
7 medicine, as well as his understanding of higher ed, as well
8 as his interest in integrated medicine.
9 CHAIRMAN BURTON: Thank you.
10 Ma'am.
11 MS. HUANG: My name's Lixin Huang. I am president
12 of the American College of Traditional Chinese Medicine in
13 San Francisco.
14 The American College of Traditional Chinese
15 Medicine was founded in 1980, and it was the first graduate
16 school, graduate program approved by the State to offer
17 master of science degree, traditional Chinese medicine, in
18 the state of California, also in the United States. Ever
19 since then, we, you know, have brought up, you know, 500
20 graduates with master of science degree, practicing
21 traditional Chinese medicine all over the United States,
22 however, 85 percent of them are in the state of California,
23 and they are very active.
24 The college has a very strong education curriculum
25 in traditional Chinese medicine, and the majority of faculty

1 teaching there are Chinese faculty or trained back in China
2 and have worked in a hospital for years, and they have been
3 teaching at ACTCM for 10 years or 15 years.
4 What I want to point out is the curriculum is
5 developed by the faculty. Faculties can teach students who
6 will practice medicine, have the best say or tell us what
7 should be developed, what content, how many hours, and we
8 should respect faculty feedback highly. In higher
9 education, faculty are the key in developing the curriculum.
10 And second, I want to point out is the integration
11 today in Chinese medicine and western medicine is really a
12 triumph. Take ACTCM, the American College, as the example.
13 We have been working with the City and County of San
14 Francisco since 1992, providing Chinese medicine, use the
15 funds from the right life (phonetic), which is federal
16 government funding to treat HIV/AIDS patients, and that
17 program has been going on for nine years.
18 CHAIRMAN BURTON: Ma'am, I wonder if you could
19 direct your -- how long have you known the doctor here?
20 MS. HUANG: Ever since Dr. Gary Klapman served in
21 the Acupuncture Board. We feel that his background in both
22 western medicine, as well as in acupuncture, will be a very
23 unique strength to this board, which could help both
24 education, as well as the practice of acupuncture in the
25 state of California. Therefore, I really would like to

1 support his appointment to serve on the Acupuncture Board.
2 Thank you.
3 CHAIRMAN BURTON: Thank you very much.
4 Any other witnesses?
5 Yes, sir.
6 MR. GIVEN: Mr. Chairman, Members of the Panel,
7 thank you very much for inviting us to speak here.
8 My name is Steve Given. I'm currently the Clinic
9 Program Coordinator for Acupuncture and Oriental Medicine at
10 Bastyr University, which is a regionally and programmically
11 accredited degree-granting institution that is approved by
12 the State of California. I am also licensed as an
13 acupuncturist in the state of California, and I have been
14 going to Acupuncture Board, then Acupuncture Committee
15 meetings, since 1991. Rather than reiterate all the other
16 comments, I'll keep my comments very brief.
17 I have known Dr. Klapman since he began serving on
18 the Acupuncture Board. I'm sure you're all aware that the
19 Acupuncture Committee and now the Acupuncture Board has had
20 a difficult past at times. And what I have noticed and what
21 I think is highly relevant here is that I've watched Dr.
22 Klapman carefully, both on the task force and on the
23 Acupuncture Board, and what I have found is that he is
24 bringing an ability to develop consensus, he's bringing an
25 ability to understand both the practitioner and the educator

1 issues on the board, and he's open to new ideas. As far as
2 I know, he has never outright said he would not support
3 3,200 hours. He has to me expressed the opinion that he
4 would support whatever was deemed by the task force to be
5 appropriate for the profession.
6 CHAIRMAN BURTON: Who's on the task force?
7 MR. GIVEN: Who is on the task force?
8 CHAIRMAN BURTON: Yes, or what's -- if not by
9 name, by six educators, four doctors, two nurses, how is it
10 made up?
11 MR. GIVEN: Members of the board -- including
12 Howard Moffet and Dr. Klapman are on the task force, members
13 of the profession, a number of members of the profession sit
14 on the task force, and members of the educational
15 institutions.
16 CHAIRMAN BURTON: And how is it broken down?
17 MR. GIVEN: I don't have the statistics.
18 CHAIRMAN BURTON: Do you have them doctor?
19 DR. KLAPMAN: Pretty much we try to keep it as
20 even as possible in regard to the schools, on the one hand,
21 and the practitioners, on the other, and it's about eight-
22 eight, and about 16 members and myself, and another board
23 member.
24 CHAIRMAN BURTON: Eight-eight, and two off the
25 board?

1 DR. KLAPMAN: Right.

2 CHAIRMAN BURTON: Thank you.

3 MR. GIVEN: So my support, in addition to respect
4 for his knowledge base, is his ability to develop consensus,
5 his ability to work with a sometime -- sometimes difficult
6 issues on the board, and I have been very favorably
7 impressed in watching him work with the other board members
8 and the members of the profession.

9 CHAIRMAN BURTON: All right. Thank you, and I
10 appreciate that. But the reason that we're having a
11 hearing, that one would think is more protracted than usual
12 for a member of the Acupuncture Board, is there seems to not
13 be consensus. And that's -- and I'm not saying right and
14 I'm not saying wrong, but that's -- you know, I'm looking
15 out at several constituents of mine that I don't think would
16 necessarily agree in that. And that doesn't mean there's
17 anything wrong, I mean, it doesn't look like a lot of
18 consensus.

19 MR. GIVEN: I appreciate that, and I'm aware of
20 those issues. What I'm suggesting is, his work on the
21 board, his ability to build consensus, is better than what
22 I've seen in the past ten years that I've been observing the
23 board. So I'm not suggesting he can't do that.

24 CHAIRMAN BURTON: Okay. Thank you.

25 MR. GIVEN: Thank you, sir.

1 CHAIRMAN BURTON: Thank you.

2 Witnesses in opposition.

3 MR. CHEN: Good afternoon, Chair and Senators. My
4 name is Ta Fang Chen, the vice-president of the California
5 Acupuncture Medical Association, also president of the
6 Council of Acupuncture and Oriental Medicine Association.

7 Right now our profession -- just we feel education
8 hours should care for treating patient, should they decide
9 -- we are initiating ways to take care of the patient, so
10 this is the first step -- point we give an idea of the
11 school administrators. We wasn't concerned about patient.
12 And it appears that education hours -- 1975, in California
13 that education hours is 1,350 hours. By 1985, we increased
14 it to 2,348 hours, and here right now, 16 years later. So
15 we need to move for our education hours.

16 The National Council of Colleges, they don't want
17 California to move to up the standard, they want to keep
18 California at a low standard, and we can pay off California.
19 We don't feel that this is the right condition. California
20 is leading the nation for acupuncture education. We don't
21 feel California should sit back to wait for the national
22 council to lead California.

23 Thank you very much.

24 MR. LOH: Senator, my name is Brian Loh.

25 SENATOR JOHNSON: Let me ask a question.

1 CHAIRMAN BURTON: Excuse me, sir, there's a
2 question that --
3 SENATOR JOHNSON: I never heard the basis of your
4 opposition to this nominee. You expressed a view about the
5 number of hours and that California be on the cutting edge
6 and so on. Do you feel this nominee would be contrary to
7 that interest, or would not be open to that, or what's your
8 gripe?
9 MR. CHEN: Yes, because -- Now, this president, he
10 was against this increased hours at the high council board
11 meeting. So we don't support this president.
12 SENATOR JOHNSON: Okay. Thank you.
13 MR. LOH: My name is Brian Loh. I'm President of
14 the United California Practitioners of Chinese Medicine. On
15 behalf of our association, I want to express our concern for
16 the confirmation for Dr. Gary Klapman and Mr. Howard Moffet
17 as a member of the Acupuncture Board.
18 The first thing, our concern is that acupuncture
19 and oriental medicine education standards, it should be in
20 line with China and in line with other medical professionals
21 in the USA, such as M.D.s, D.D.S, D.C.s.
22 Mr. Howard and Dr. Gary Klapman did not understand
23 the struggle that acupuncturists are going through. As we
24 look at the year of 2001, California Acupuncture Board
25 schools curriculum hours in 26 schools, the average hours is

1 only 2,966 hours, compared to M.D.s' 6,000 hours, compared
2 to chiropractors' 4,200 hours, and compared to acupuncture
3 schools in Bejing, China, it's 5,651 hours, and Chengtu,
4 China, it's 6,440 hours. So our school year, education
5 hours, are really too low. Dr. Gary Klapman has been in
6 full support --
7 SENATOR JOHNSON: Excuse me. Excuse me, Sir.
8 Senator Knight has a question.
9 SENATOR KNIGHT: Yes, the hours that you presented
10 for various rotations, I don't know whether that's good or
11 bad.
12 MR. LOH: This is from China.
13 SENATOR KNIGHT: Well, but --
14 SENATOR JOHNSON: You think that's the appropriate
15 level, the 5,000 hours in Bejing or the 6,000 hours in
16 Chengtu. It's not clear to us if you think that's a great
17 idea that it be that long or not.
18 MR. LOH: I think it's still not enough, because
19 we want to raise our level to the mainstream, we must be
20 compared to M.D.s and D.C.s --
21 SENATOR JOHNSON: So it's your testimony that you
22 don't think and in the judgment of the earlier witness, you
23 don't think we should have some standard that's adopted
24 elsewhere in the country, we ought to be more like China,
25 and more like M.D.s and other healthcare professionals in

1 this country?

2 MR. LOH: Yes.

3 SENATOR JOHNSON: I think we've got that. Now, if
4 you could address the qualifications or lack thereof or the
5 suitability to serve or the lack thereof of this nominee,
6 that would be most helpful.

7 MR. LOH: Okay. Dr. Gary Klapman wants California
8 to adopt a global acupuncture determined by the National
9 Council. The National Council of Colleges of Acupuncture
10 and Oriental Medicine minimum requirement is only 1,700 in
11 the class hours. It was designed in order to qualify
12 schools for government subsidence loans and grants for
13 students. So California is leading the nation with the
14 highest standard of acupuncture. We question Gary Klapman's
15 interest and skill in the keeping the -- to lower California
16 acupuncture standards, which would hurt California consumers
17 and harm public health, safety, and welfare. Please don't
18 confirm Dr. Gary Klapman as State of California board
19 member.

20 SENATOR JOHNSON: All right. Let me see if I
21 understand this. Are you saying that this lower standard,
22 which you say the nominee favors, this lower number of
23 hours, if California were to adopt a higher standard, that
24 it would somehow put at risk government subsidies and grants
25 and student loans and so on that are being provided to

1 students under the present standards in California?
2 MR. LOH: Well, I think we consider a professional
3 practice must be not only considered a financial one. Even
4 ones that study to be an M.D. student, the first thing, you
5 just put the part of that first, then you consider your
6 financial loans.
7 SENATOR JOHNSON: The question that I asked was
8 really a simple one. Are you contending that schools in
9 California don't want to see more hours because they might
10 lose federal funding in the form of grants or student aid or
11 loans or whatever? Is that -- did I understand that to be
12 your testimony?
13 MR. LOH: Yes, I guess so.
14 MR. CHEN: Okay. So may I add? Because of the
15 National Council they have an education meeting just with
16 the Council, and it's for the school. So a school then is
17 over against the National Council. This is in our problem.
18 California Acupuncture tried that education. So California
19 colleges is afraid of the -- against the industry National
20 Council
21 MR. DU: My name is John Du. I'm an acupuncturist
22 in Sacramento. Today I represent the CCAA, California
23 Certified Acupuncture Association. My background, I come to
24 the United States since 1985. I was in acupuncture in
25 American College of Traditional Chinese Medicine. That's

1 the Mr. Howard Moffet's school at the time. He used to be a
2 teacher over there.
3 Do you understand?
4 CHAIRMAN BURTON: Yeah.
5 MR. DU: I first come to the United States as an
6 acupuncture teacher to come to Mr. Howard Moffet's. It's in
7 the United States that I had known him already.
8 Do you understand?
9 CHAIRMAN BURTON: Yes.
10 MR. DU: It's more than 15 years already. Okay.
11 Although I have known him for a short time, but I know just
12 say he learned acupuncturist -- acupuncture very little. I
13 had taught over there for a very short time, and there I had
14 known him. He got licensed, it just seems acupuncture
15 license is so easy to get. And shouldn't acupuncture is
16 very tough job. Okay. My problem, my generations of family
17 who have been practicing acupuncture, and I went through
18 M.D. school six years, and eight years, since 1966, until
19 1968. After M.D. school, I learned acupuncture in two very
20 formal schools for four years. And I am the first
21 acupuncture master degree from Chinese Medicine School.
22 Okay. My family, I learned from the family a long time all
23 ready.
24 CHAIRMAN BURTON: Doctor, if you could tell us
25 exactly what the problem --

1 MR. DU: Yeah, a relevant point, I know.
2 CHAIRMAN BURTON: Okay.
3 MR. DU: At right here right now, I practice, I
4 still start, start, learn, learn, learn. I just feel
5 acupuncture is a long-time job, hard job. This is the
6 reason those 3,000, 4,000, 5,000, 6,000 still is the very
7 beginning. Just my --
8 SENATOR JOHNSON: That's why they call it
9 practice, I guess.
10 MR. DU: So, my point is -- or I taught to reach a
11 point is objection to these two guys, okay, one is Dr. Gary
12 Klapman, and Mr. Howard Moffet to be nominated as a member
13 of the Acupuncture Board. The point is they really don't
14 understand what's acupuncture, they think too simple. And
15 powerless -- we need more, okay, as much as we can. So
16 that's much, we had a deal, just typical politics, okay.
17 All the acupuncturists they flew from Stockton, California,
18 all the staff showed up, 3,200 hours is all we need or not.
19 And they all have the opinion already why they object. Dr.
20 Klapman makes a compromise, has no reason. No reason to
21 compromise.
22 We should listen all our country's opinion. Many
23 doctors older than me -- I saw some older than me. They all
24 agree right now, so far, we need 3,200 hours for the student
25 teaching. Okay. Not the 2,800 hours compromise. So those

1 guys see the acupuncture too easy. That's no way to be a
2 member of the Acupuncture Board. That's all I say, that's
3 it. That's it.
4 CHAIRMAN BURTON: One of the things that I don't
5 understand is one would think that the schools would want
6 longer hours and the practitioners less hours. I mean, so I
7 don't understand what the schools -- I don't understand the
8 schools' situation exactly, but thank you. But the basic
9 thing is you do not believe that the doctor has enough
10 understanding of acupuncture and does not -- is not
11 following the fact that just more study could be done
12 because of more responsibilities to the changes in medicine
13 and the Legislature.
14 MR. DU: Yes.
15 CHAIRMAN BURTON: And just one last question. How
16 much continuing education do you have to do once you're
17 licensed? How many hours do you have to go back to school?
18 MR. CHEN: Sir, I know we believe for it that to
19 graduate first, so the first compromise 3,200 hours.
20 CHAIRMAN BURTON: Thank you.
21 MR. CHEN: The 3,200 hours.
22 CHAIRMAN BURTON: All right, thank you. Thank you
23 very much.
24 Senator Knight.
25 SENATOR KNIGHT: Thank you, Mr. Chairman. I'd

1 like to ask Gary a question I think is -- the number of
2 hours that the schools require right now, is that sufficient
3 to graduate an acupuncturist, and is that what we've been
4 doing in the past?
5 DR. KLAPMAN: Well, the required number of hours
6 was resolved in 1985 to be 2,350 hours. Most of the schools
7 that are approved by the Acupuncture Board now have twenty
8 eight or twenty nine hundred hours. They have done that
9 independently.
10 SENATOR KNIGHT: Okay.
11 DR. KLAPMAN: And so I think in answer to your
12 question is that 2,350 is not adequate.
13 SENATOR KNIGHT: Okay. Then 2,900 hours that
14 they're utilizing today, is that adequate?
15 DR. KLAPMAN: I would be able to better answer
16 that question after this task force is finished.
17 SENATOR KNIGHT: Okay. And the task force will
18 come up with a recommendation for the number of hours to
19 graduate an acupuncturist, right?
20 DR. KLAPMAN: That's correct.
21 SENATOR KNIGHT: And so are you for 1,500 hours,
22 3,000 hours, 6,000 hours, or are you waiting for the task
23 force to come up with a number of hours to support the
24 education of acupuncturists?
25 DR. KLAPMAN: The latter. I'm --

1 SENATOR KNIGHT: Thank you.

2 DR. KLAPMAN: Thank you.

3 CHAIRMAN BURTON: But you're on the task force,

4 aren't you?

5 DR. KLAPMAN: I am.

6 CHAIRMAN BURTON: You're going to have to vote,

7 aren't you?

8 DR. KLAPMAN: Yes.

9 CHAIRMAN BURTON: But you haven't got any idea?

10 DR. KLAPMAN: Well, we have yet to --

11 CHAIRMAN BURTON: You're going to vote last,

12 waiting for the others or what?

13 DR. KLAPMAN: No. But we have yet to actually

14 delineate all of the competencies that we believe as experts

15 in the field should exist for an entry-level practitioner.

16 CHAIRMAN BURTON: Already those are established.

17 Right now the schools on their own raise the hours?

18 DR. KLAPMAN: That's right.

19 CHAIRMAN BURTON: Without any supervision in

20 deciding what they think is best and going to do it?

21 DR. KLAPMAN: They have done it.

22 CHAIRMAN BURTON: Was that right?

23 DR. KLAPMAN: It seems to be working fairly well,

24 because they're quite abreast of what's needed in the field,

25 and --

1 CHAIRMAN BURTON: Well, then why even have a task
2 force, why not just let them decide what ever is supposed to
3 be done?
4 DR. KLAPMAN: Well, we have other professionals in
5 the field that are asking for more hours, and so there is a
6 contentiousness not only with the schools, but with the
7 practitioners.
8 CHAIRMAN BURTON: When did the schools up their
9 hours?
10 DR. KLAPMAN: Afterwards.
11 CHAIRMAN BURTON: After the old board made their
12 findings or what?
13 DR. KLAPMAN: No, no, no, this has been a
14 progressive thing over the years. This has been a graduated
15 process.
16 CHAIRMAN BURTON: So their hours are ahead of the
17 basic requirement hours set forth by the board?
18 DR. KLAPMAN: That's right. It's the issue --
19 SENATOR JOHNSON: It's the issue --
20 CHAIRMAN BURTON: I don't know what the issue is.
21 (Laughter.)
22 SENATOR JOHNSON: Can one sit for the examination
23 to become a licensed acupuncturist in California with the
24 minimum 2,350?
25 DR. KLAPMAN: One cannot sit to take the exam

1 unless they graduate from an approved institution. The
2 institutions have been approved by the board. All of those
3 schools have to have at least 2,350 hours in their
4 curriculum. They all have more than that.
5 SENATOR KARNETTE: I have a question.
6 DR. KLAPMAN: I don't know if that answers your
7 question.
8 SENATOR JOHNSON: Yes, it does. I understand. I
9 understand. You would not accredit a school, that is, you
10 would not allow graduates of a school to sit for the exam
11 unless they'd had a minimum of 2,350 hours?
12 DR. KLAPMAN: That's right.
13 SENATOR JOHNSON: But in addition to the minimum
14 of 2,350 hours, they have to have a diploma?
15 DR. KLAPMAN: That's right. From one of the
16 approved schools.
17 SENATOR KARNETTE: I have a question. If these
18 schools you're speaking of, are they all in California?
19 DR. KLAPMAN: They are not.
20 SENATOR KARNETTE: They are not. Okay. So then
21 people come from out of state or from -- and can take and
22 sit for the exam; is that correct?
23 DR. KLAPMAN: That's correct. If they have -- if
24 they graduate from one of these approved schools.
25 SENATOR KARNETTE: Now, if we were -- if the task

1 force recommends that there should be more hours, will that
2 apply only to the state of California?
3 DR. KLAPMAN: It will apply to the schools that
4 the California Acupuncture Board approves, including those
5 schools that are out of state.
6 SENATOR KARNETTE: So, in essence, if they want to
7 practice in California and they're from out of state, they
8 would have to, if their schools don't give that many hours,
9 they would have to come to school in California; is that
10 right?
11 DR. KLAPMAN: I believe what can happen is that
12 they can graduate from those schools and then make
13 arrangements with the board to take classes to meet the
14 number of hours in other institutions that are approved.
15 SENATOR KARNETTE: Okay.
16 CHAIRMAN BURTON: Thank you.
17 Any other witnesses in opposition?
18 What I'm going to suggest, Doctor, is that we now
19 put this over. We will bring it back for a vote only at our
20 next hearing, which I believe is Monday.
21 SENATOR JOHNSON: It is Monday.
22 CHAIRMAN BURTON: To try to figure out everything
23 here. Because I don't understand the school -- I don't know
24 what the Acupuncture Board's doing, the schools on their own
25 are now 25 percent above the basic minimum requirement. And

1 they can do -- I guess, they'll sit those additional hours
2 that they are doing is up to each individual school to do
3 with any way they want, right.
4 DR. KLAPMAN: As long as they meet the minimum.
5 CHAIRMAN BURTON: Right. And what you guys are
6 doing is you basically undid what the old board did, now
7 you're having a task force to figure out how things would --
8 how the discipline should be divided in hours, and the
9 schools are against this, because that would, I guess, give
10 you some jurisdiction and some supervision over the schools,
11 where now they can do 600 hours any way they feel like doing
12 them. Well, you just said they could. You know, I'm sure
13 you're not going to have Home Ec, but I mean, it would just
14 seem to me that none of this makes a lot of sense to me.
15 And so we thank you for your -- thank you for your
16 testimony.
17 And again, if Senator Johnson didn't make it
18 clear, the questions about, you know, the information
19 appeared to not be given to you by the administration, has
20 been asked to all appointees who've appeared here recently,
21 and again, for what it's worth, if you ever get appointed to
22 this or appointed to something else, and you get
23 communications from, you know, the Senate or a legislative
24 body or a government thing, it's kind of good, if not to
25 answer, then to go to somebody on the Acupuncture Board and

say, I got this letter, do you know what this is all about. Because, I mean, when you're new, one doesn't know.

So thank you, and we will continue your confirmation for vote only until Monday. And thank you again, Doctor.

DR. KLAPMAN: And you guys, so you don't need my presence on Monday?

CHAIRMAN BURTON: I don't think.

DR. KLAPMAN: Thank you.

CHAIRMAN BURTON: Dr. Howard Moffet, Member Acupuncture Board.

Go ahead, Doctor.

MR. MOFFET: Hi, I'm Howard Moffet. I wrote a letter to each of you, has that been distributed?

CHAIRMAN BURTON: Right.

MR. MOFFET: So that's basically my written statement.

I just want to emphasize that I'm very interested in education, and I think that everybody is trying to improve education and have the best possible programs for training acupuncturists, there's just a lot of disagreement about what that looks like.

The hours-based proposal was approved by the prior board. When we came on to the board, we got a note from the Department of Consumer Affairs, which I think most of us

1 read as at the very least we needed to rework the proposal,
2 we needed to provide some better justification or something.
3 The letter read, and this is regarding the regulation
4 package, "In it's public policy impact statement in the
5 request for approval of regulations, it indicates not
6 applicable. If the regulation change does not impact the
7 public, i.e., consumers, how is it of value?" It goes on to
8 say, "The Department does not like being put in a position
9 that would necessitate Departmental rejection of a
10 regulation package."
11 So when we got that, we felt like at the very
12 least we need to in some sense go back to the drawing board,
13 we need to look at this, we need to provide some evidence of
14 the necessity, and then bring this forward again. So when
15 we -- in our March meeting, we were looking at the --
16 CHAIRMAN BURTON: So the Board of Consumer Affairs
17 had no idea how increased education of somebody in a medical
18 discipline would benefit the public? I'd rather have them
19 in here.
20 MR. MOFFET: Yeah. What I'm saying is when we
21 came on the board we --
22 CHAIRMAN BURTON: No, I'm asking what they said to
23 you.
24 MR. MOFFET: Well, this was how the package was
25 submitted, which I was not on the board at that time, so I

1 can't --

2 CHAIRMAN BURTON: No, no, no. As I thought I

3 heard --

4 MR. MOFFET: Yeah.

5 CHAIRMAN BURTON: -- that the purpose of

6 regulation or whatever it is, and this was a regulation, it

7 was no -- it wasn't like -- it didn't seem like an

8 imposition, it seemed like people in the discipline kind of

9 wanted more required hours, that they wanted to, if

10 possible, a couple of benefits would be is to have better

11 trained acupuncturists. I would think that almost would

12 speak for itself.

13 MR. MOFFET: Yeah.

14 CHAIRMAN BURTON: Okay.

15 Senator Johnson.

16 SENATOR JOHNSON: If this is the appropriate time.

17 CHAIRMAN BURTON: Yes, I think so.

18 SENATOR JOHNSON: Thank you, sir.

19 I'm going to ask you the same questions that I've

20 asked the earlier nominee, and I've asked a number of

21 nominees over the last several weeks.

22 Number one, prior to your appointment, did anyone,

23 either the Governor or anyone from the Governor's office or

24 a representative of the Governor, ask you about any

25 potential conflicts of interest that you might have?

1 MR. MOFFET: Yes.

2 SENATOR JOHNSON: What was the brunt of those

3 conversations, who did you have them with?

4 MR. MOFFET: I had a conversation, I believe it

5 was with Ron Wong or it could have been with his

6 predecessor. I think there was someone prior to him that I

7 may have also spoken to.

8 SENATOR JOHNSON: And what was the conversation?

9 MR. MOFFET: They -- basically what I recall is

10 kind of the impression that, you know, making it clear that

11 I would be in some sense representing the Davis

12 administration, that I would be part of the Davis

13 administration in some sense. And that there was an

14 obligation to act with integrity and ethically. And I'm not

15 sure if that was explicitly stated, but that was the

16 impression I came away with.

17 SENATOR JOHNSON: Well, then you are the first

18 person that I've directed this question to who's answered it

19 in the affirmative. So you're sure that they talked to yo

20 about that?

21 MR. MOFFET: Uh-huh.

22 SENATOR JOHNSON: Did they talk to you about your

23 legal obligations?

24 MR. MOFFET: Prior to my appointment? I don't

25 recall.

1 SENATOR JOHNSON: Okay. Did they talk to you
2 about it after your appointment --
3 MR. MOFFET: Yeah.
4 SENATOR JOHNSON: -- or was it just a form that
5 was included in a package of material that you received?
6 MR. MOFFET: Yes, afterwards I got the form and at
7 some point I remember -- we had a whole board orientation in
8 January, but I filed in December, so I must have had this
9 conversation with someone before that who pointed out to me
10 the need to file that, and so I did.
11 SENATOR JOHNSON: Was it someone on the staff?
12 MR. MOFFET: Someone on the staff. I think it was
13 probably Marylin Neilson, but it could have been someone on
14 her staff or someone else that I talked to.
15 SENATOR JOHNSON: Thank you, Mr. Chairman.
16 CHAIRMAN BURTON: There were a couple concerns
17 raised that I want to go through now. Under the
18 legislation, the board's to include four acupuncturists with
19 five years of experience in acupuncture. Have you had five
20 clinical years as a full-time acupuncturist, what's your
21 experience in the discipline?
22 MR. MOFFET: I was licensed in 1991 and had a
23 private practice for a while, and also practiced at the
24 community clinics at the American College of Traditional
25 Chinese Medicine. I've also practiced at Davies Hospital at

1 California Pacific Medical Center. My practice was always
2 part time, but I'd have to figure out, you know, exactly --
3 CHAIRMAN BURTON: Do you think you're close to
4 five, give or take?
5 MR. MOFFET: Yeah.
6 CHAIRMAN BURTON: In April of this year, there was
7 a site visit to the University of Swiss Medicine, and it was
8 recommended they remove western diagnosis from the patient
9 clinic forms. Do you remember making that recommendation or
10 why?
11 MR. MOFFET: We had a discussion at the last board
12 meeting about these recommendations we had made, and that
13 was misunderstood. I would have to -- I might have those
14 notes here with me.
15 CHAIRMAN BURTON: Well, just what is it?
16 MR. MOFFET: Well, they had many blanks on the
17 form for multiple diagnoses, and it was not clear. And I
18 think what I had said was that if you're going to record the
19 western diagnosis, it's a good idea to say that this was the
20 diagnosis that the patient reported to us or the physician
21 communicated directly to us. Because the patient had --
22 CHAIRMAN BURTON: No, patients don't diagnose,
23 they complain. Doctors diagnose.
24 MR. MOFFET: Right. But the patient will come
25 into an acupuncture clinic and say my doctor diagnosed me

1 with something. Or they'll just come in and say I have this
2 disease, and you need to ask -- well, you need to ask, did a
3 doctor make that diagnosis, and then if they say so, you can
4 say, per the patient, the patient says they were diagnosed
5 with this.
6 CHAIRMAN BURTON: Well, why --
7 MR. MOFFET: And it's different from a physician
8 telling you directly.
9 CHAIRMAN BURTON: So why would we want to remove
10 western diagnoses?
11 MR. MOFFET: I don't know. I think that that was
12 misunderstood. We had a lot of misunderstandings with them.
13 CHAIRMAN BURTON: It's stated that you recommended
14 that the board reduce the number of questions on the exam
15 from 250 to 200 for acupuncture, while other healthcare
16 professions have at least double and triple, and sometimes
17 quadruple that amount in their exams. Now, it's a
18 contention that nobody complained about the length of the
19 exam, except the person who wrote the exam, and says it
20 would be easier for him if he had to write less questions.
21 Do you recall any of that?
22 MR. MOFFET: We had Dr. Hertz from the Office of
23 Examination Resources come and talk to us, and this was one
24 of his recommendations that we reduce the number.
25 CHAIRMAN BURTON: And who is he?

1 MR. MOFFET: He is a -- I believe he's the -- I'll
2 say the Director.
3 CHAIRMAN BURTON: Director of what?
4 MR. MOFFET: Director of the Office of Examination
5 Resources.
6 CHAIRMAN BURTON: From the State or something?
7 MR. MOFFET: From the State of California.
8 CHAIRMAN BURTON: So he wanted it reduced?
9 MR. MOFFET: It was his recommendation. He said
10 it would preserve the validity and reliability. He actually
11 said it would be fairer.
12 CHAIRMAN BURTON: The less questions, the more
13 valid the test?
14 MR. MOFFET: No. He said it would be just as
15 valid. But after a certain point, you can ask a thousand
16 questions, but, you know, you still could figure out whether
17 someone knows the material. There was -- I want to point
18 out there -- I looked in the minutes and there was no
19 objections recorded, and --
20 CHAIRMAN BURTON: Well, that's some of the --
21 MR. MOFFET: Well, let me just say --
22 CHAIRMAN BURTON: This is just so you know, some
23 of the biggest mistakes we ever make sometimes go through
24 unanimously.
25 (Laughter.)

1 MR. MOFFET: Yeah, well, and here's what I'm
2 talking, because I've heard these concerns.
3 CHAIRMAN BURTON: I wasn't even thinking that way.
4 Go ahead, sir.
5 MR. MOFFET: I've heard all these concerns
6 subsequent to the vote, because we didn't hear them at the
7 time.
8 CHAIRMAN BURTON: Was the vote noticed so that
9 people could --
10 MR. MOFFET: Oh, yeah. What I told people is if
11 this really undermined people's confidence in the exam,
12 let's put the number back up.
13 CHAIRMAN BURTON: Well, I think I'll get to what I
14 think we're going to assume that is.
15 MR. MOFFET: Okay.
16 CHAIRMAN BURTON: And I'll try to remember it when
17 I get through these other two things.
18 Okay. There was a concern, let's see -- and
19 that's the problem. Let's review the government's process.
20 Is it you were recommended by the colleges, as opposed to
21 the profession, and then there was a concern about allying
22 an accreditation commission for active function in oriental
23 medicine, you conducted school site visits on behalf of the
24 board, that would be the accreditation commission group. Is
25 it at odds kind of with the profession? Because I think the

1 basic thing is that the profession feels that they are being
2 maybe not treated like, but relegated or looked upon as
3 second-class -- as a second-class discipline in the medical
4 profession by not having more hours, having, you know, let's
5 shorten the test for these guys, when if you're in another
6 discipline it's anywhere from 600 to 1,200 questions, and I
7 really think what it gets down to is their basic concern
8 that they feel that the board, and, unfortunately, as
9 represented by the two doctors that are here today, do not
10 hold that profession in much esteem. I mean, that is
11 basically like, you know, we're so unimportant, we'll reduce
12 the test -- I mean, let's get it down to six questions,
13 because we'll figure out if they know the difference, you
14 know, between a needle and a nerve, and the lack of wanting
15 to have more hours, I think. I think that is the basic
16 concern. I don't think it -- I don't know if it necessarily
17 goes to either of you two gentleman as individuals, but it
18 goes to a direction that they perceive the board going into,
19 and this is a profession that had to fight its way from
20 having -- I can't remember if initially either the doctor
21 had to be in the same room as them, it might have even had
22 to be under the supervision, then under the prescription,
23 then it was something else, then temporarily they could
24 treat worker's comp, then permanent worker's comp, but for
25 something that's been around probably longer than

1 Hippocrates, they've had to fight their way into getting
2 respect for their profession, and they see the actions of
3 this board is either denigrating that as well, and I think
4 that's the basic -- you know, I think that's the bone of
5 contention, at least of the people that I represent, and I
6 probably, you know, represent maybe the most acupuncturists
7 in the state, if not the nation, in one area. And that's --
8 I think that's their basic beef. Isn't that something?
9 MR. MOFFET: Yeah. And I'm sorry that they feel
10 that way. I know that -- I can't speak for Gary, but I
11 think we both as members of this profession ourselves,
12 certainly the last thing we want to do is degrade it. That
13 our interest in the profession, our activities are because
14 we are -- we are trying to support the profession.
15 CHAIRMAN BURTON: Well, and it seems again that
16 maybe a lack of insensitivity. Now, I don't know when you
17 decided -- and again, if I was taking the test, I'd be
18 delighted to have it reduced, Doctor, okay. And why don't
19 you cut out the whole last two pages, you know, and ask
20 maybe who am I, and if I get half that right, I pass. Is it
21 the kind of lack of insensitivity, and I'm wondering when
22 you reduce that, when you do these things, how much notice
23 do you really give, do they go out, are there mailings out
24 to either the associations or the individual acupuncturists?
25 MR. MOFFET: Not every acupuncturist is noticed,

1 but anybody who wants to be on the mailing list can be on
2 the mailing list for agendas, and the agendas are posted on
3 the website. And there were people there, there were a lot
4 of people there, for some important agenda items, other
5 items relating to the exam, and they didn't -- they didn't
6 at that time speak up about this, so we heard about it
7 later.
8 CHAIRMAN BURTON: Okay. Well, that would be
9 either a problem with notification or a problem with people
10 sleeping on our side.
11 Can you do me one more favor before we end this,
12 because we will assume that the testimony from the earlier
13 appointee was the same as this one, the concern about the
14 hours and attributing the support is the same. Did you read
15 the letter, the excerpt to the part of earlier, that came
16 from the Department to you as a decider to reduce it?
17 MR. MOFFET: Yes.
18 CHAIRMAN BURTON: It's kind of a short letter.
19 MR. MOFFET: Well, it's a page and a half, but I
20 can read the --
21 CHAIRMAN BURTON: Salient parts.
22 MR. MOFFET: And I think basically they were
23 saying there were problems with the -- how, that maybe
24 perhaps there were things missing from the proposal or
25 something, and this was our very --

1 CHAIRMAN BURTON: Go over again the part that they
2 wondered what benefit it would be to anybody to have better
3 trained acupuncturists.
4 MR. MOFFET: It says that the regulation change
5 package failed to address -- I'm sorry, that's the next
6 section. Well, I'll read it, "has failed to address the
7 hardship of time and cost such a new requirement would
8 create for students in schools." And then what I read
9 before, "In its public policy impact statement in the
10 request for approval of regulations, it indicates not
11 applicable. If the regulation changed, it does not impact
12 the public, how is it of value." So they --
13 CHAIRMAN BURTON: All right. So they put not
14 applicable, and the Department wasn't smart enough to figure
15 out that the better trained you are, the better you might do
16 the job. That's my comment and not yours.
17 Senator Karnette.
18 SENATOR KARNETTE: The proposal, the first
19 proposal, was done by a different board that had a task
20 force agreement?
21 MR. MOFFET: They -- yeah, it was passed by the
22 board, two of whom are still on the board, the rest of whom
23 their terms expired or whatever.
24 SENATOR KARNETTE: And there was a task force,
25 similar to the one that is in existence now?

1 MR. MOFFET: I'm not sure.
2 SENATOR KARNETTE: You don't know?
3 MR. MOFFET: There may have been. I think there
4 was a committee or something.
5 SENATOR KARNETTE: A committee. And this package,
6 this proposal, was approved of by the previous commission or
7 board?
8 MR. MOFFET: Right.
9 SENATOR KARNETTE: And then it went to the
10 Department, correct?
11 MR. MOFFET: Right.
12 SENATOR KARNETTE: And this letter is a response
13 to that proposal?
14 MR. MOFFET: Yes.
15 SENATOR KARNETTE: And so now, the board now feels
16 that it should make another proposal based on the
17 recommendations and ideas from that letter, right?
18 MR. MOFFET: Yes.
19 SENATOR KARNETTE: Now, is it your idea that
20 whatever comes out from the task force you're going to
21 recommend, are you going to follow, and go along with?
22 MR. MOFFET: Well, I'm glad you ask that, because
23 the task force is in the middle of doing it, and I really
24 don't want to prejudice them by stating an opinion about
25 that, but what I said to other people is I have a lot of

1 confidence in Dr. Klapman as the chair of this task force,
2 and I'm glad he is keeping an open mind as the chair. If
3 the members want to express their opinions, I think that's
4 fine. Let's -- I'd like to see what the task force
5 recommends. I think we've got good people on the task force
6 and a good chair, and I'm sure I'll support whatever they
7 agree on.
8 CHAIRMAN BURTON: Well, you don't want to do what
9 it seems most of the people in the industry want to do with
10 the hours, because you want to wait for a task force whose
11 report you may or may not accept? It doesn't make a lot of
12 sense.
13 MR. MOFFET: I'm sorry, when you say most of the
14 industry supports it, I don't think that's correct.
15 CHAIRMAN BURTON: I'm not talking about the
16 schools, I'm talking about the practitioners.
17 MR. MOFFET: Okay. Well, as far as the
18 professional associations have expressed their opinion, and,
19 yes, they are pretty much in agreement on it.
20 CHAIRMAN BURTON: Okay. So, but I mean, why -- it
21 just seems to me that we don't want to do anything, we're
22 waiting for a report that we may reject, and then
23 everybody's back to square one? I mean, I know you don't
24 want to --
25 MR. MOFFET: Well, I'm not opposed to 3,200 hours,

it's never come to a vote for me, none of the other members of the board ever made a motion to go anywhere with it, so.

CHAIRMAN BURTON: All right. Well, thank you, Doctor. Thank you, Doctor.

MR. MOFFET: And just for the record, I'm not a doctor --

CHAIRMAN BURTON: Oh, I'm sorry.

MR. MOFFET: Mr. Moffet is fine. Thank you though.

CHAIRMAN BURTON: Okay. You're not a what?

MR. MOFFET: I'm not a doctor.

CHAIRMAN BURTON: You're not. Okay.

SENATOR ROMERO: But you slept at a Holiday Inn Express last night?

MR. MOFFET: That's right, I feel like one.

(Laughter.)

Thank you all very much.

CHAIRMAN BURTON: Do you have some family here with you?

MR. MOFFET: Yes, I do.

CHAIRMAN BURTON: Sir, could you introduce them, please?

MR. MOFFET: Yes, my mother, Laura Moffet.

CHAIRMAN BURTON: Hi.

Thank you.

1 MR. MOFFET: Thank you.
2 CHAIRMAN BURTON: We'll put that -- you're not
3 related to Moffet Hospital, are you?
4 MR. MOFFET: No.
5 CHAIRMAN BURTON: You wish?
6 MR. MOFFET: So, it's the same situation,
7 although.
8 SENATOR KARNETTE: I have one other thing,
9 Senator.
10 CHAIRMAN BURTON: Yes, go right ahead.
11 SENATOR KARNETTE: Acupuncture is now covered by
12 HMOs and you're involved with these; is that right?
13 MR. MOFFET: Acupuncture is occasionally covered
14 by health plans, for instance, I used to work with a company
15 working as a partner with Blue Shield, and Blue Shield has
16 an HMO, and then they have a PPO, and indemnity, they have
17 many, many plans, and some of them cover acupuncture, some
18 of them don't. Sometimes it's an extra rider. So any
19 health plan may or may not have that as a covered benefit.
20 SENATOR KARNETTE: But, I mean, Kaiser does or
21 does not? Kaiser?
22 MR. MOFFET: Kaiser, I would say no. They do have
23 acupuncturists at many of their medical centers, working in
24 their pain clinics, but as a regular benefit, I wouldn't say
25 that it's a regular benefit available to everyone.

SENATOR KARNETTE: Thank you.

MR. MOFFET: Thank you.

CHAIRMAN BURTON: Thank you very much, Mr. Moffet.

(Thereupon the Senate Rules Committee proceedings were concluded at 4:10 p.m. on September 5, 2001.)

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MONDAY, SEPTEMBER 10, 2001
2:30 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 10, 2001

2:30 P.M.

Reported by:

Michael Mac Iver, Shorthand Reporter

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TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

MARC MARCUS, California Advocate Attorneys Association

DOUG KIM, Consumer Attorneys of California

INDEX

1 PROCEEDINGS

2 CHAIRMAN BURTON: Governor's appointees for action
3 only. Gary Klapman, Member of the Acupuncture Board, Howard
4 Moffet, Member of the Acupuncture Board.
5 We held lengthy hearings on the two appointees
6 last week. We had a problem with the fact that Dr. Klapman
7 did not respond to either the Rules Committee or the FPPC
8 over a six month period when we were trying to contact him
9 for information. He had allowed that between his practice,
10 his teaching, and his family that he was just too busy to do
11 that. I think with the problems that were raised by members
12 within the community, that if he was unresponsive to the
13 Legislature and the FPPC, I don't know how the people in the
14 acupuncture profession would feel he would be responsive to
15 them, and I personally am not -- I am unable to support him.
16 Mr. Moffet, although there was opposition to him,
17 I think it's more over concern of the length of time it
18 takes that they would want to study. I think that his
19 qualifications seem to be fine. For that reason, and given
20 Mr. Moffet's testimony where he appreciated how serious the
21 problems were, that I'm prepared to ask for an aye vote on
22 him. And, additionally, I will ask the Committee on Rules
23 to have the Joint Committee of Sunset Review, chaired by
24 Senator Figueroa, to take a careful look -- along with the
25 Committee on Business and Professions, take a careful look

at the issues raised during the hearings. And there is also a letter from the Council of Acupuncture and Oriental Medicine, which I am forwarding to the Committee. It's stressing concerns about licensure requirement.

I think the frustration of many individuals in the community is that their concerns about education were dismissed too easily. The joint Committee is scheduled to conduct the Sunset Review Hearing and look forward to a careful examination of those issues. So, basically, I intend to support Mr. Moffet and not vote for Mr. Klapman myself.

SENATOR JOHNSON: I would move the confirmation of Mr. Moffet.

CHAIRMAN BURTON: Call the role.

MS. WEBB: Senator Karnette.

SENATOR KARNETTE: Aye.

MS. WEBB: Karnette Aye. Senator Knight.

SENATOR KNIGHT: Aye.

MS. WEBB: Knight Aye. Senator Romero. Senator Johnson.

SENATOR JOHNSON: Aye.

MS. WEBB: Johnson Aye. Senator Burton.

CHAIRMAN BURTON: Aye.

MS. WEBB: Burton Aye.

CHAIRMAN BURTON: It is approved.

1 Governor's appointees appearing today. Frank M.
2 Brass, Commissioner, Worker's Compensation Appeals Board.
3 Mr. Brass.
4 MR. BRASS: Good afternoon, Chairman Burton and
5 Members of the Senate Rules Committee. I would like to take
6 this opportunity to thank Governor Gray Davis for appointing
7 me to serve as a commissioner on the Workers' Compensation
8 Appeals Board.
9 This nomination, subject to the confirmation and
10 consent of the Senate, affords a unique opportunity to serve
11 the people of California, my native state, and to repay the
12 Workers' Compensation community for a most rewarding
13 professional life.
14 I have practiced law before the Appeals Board
15 since 1966. I have appeared at every district office from
16 Fresno to the Oregon border. I represented injured
17 employees for 17 years and I have represented insurance
18 carriers and self-insured employers for 18 years.
19 My divergent career has provided an extraordinary
20 opportunity to observe the Workers' Compensation system from
21 a myriad of viewpoints, and consequently to develop a
22 balanced philosophy concerning delivery of benefits to
23 injured workers.
24 Thank you.
25 CHAIRMAN BURTON: Questions, Senator Johnson?

SENATOR JOHNSON: No questions at this time.

CHAIRMAN BURTON: Senator Romero.

SENATOR ROMERO: No questions.

CHAIRMAN BURTON: Senator Knight. Senator Karnette.

SENATOR KARNETTE: No questions.

CHAIRMAN BURTON: Do you have family here?

MR. BRASS: Yes, I do. My wife Charlene Brass, my son, Tony Brass, his wife, Michelle. Their child, my grandson, Nicholas.

CHAIRMAN BURTON: Where.

MR. BRASS: They just stepped out of the room.

My son, Frank Brass, and his wife, Jennifer.

CHAIRMAN BURTON: Bring the kid in.

(Laughter.)

CHAIRMAN BURTON: We'll just hold for a while.

Are there witnesses in support?

MR. MARCUS: Marc Marcus, California Advocate Attorneys Association. We in the organization and in the Workers' Compensation community have known Frank for many, many years, although recently he has been practicing on the opposite side of the fence. We know him to be fair, knowledgeable, and we enthusiastically support his candidacy.

MR. KIM: Mr. Chair and Members, Doug Kim on

1 behalf of the Consumer Attorneys of California. And we're
2 also pleased to support Mr. Brass's nomination.
3 CHAIRMAN BURTON: Do you think he went out to get
4 a newspaper?
5 (Laughter.)
6 CHAIRMAN BURTON: Oh, okay. All right. He's the
7 only blond haired Nick in the whole country.
8 Any opposition?
9 All right. I'll move the nomination. Call the
10 role.
11 MS. WEBB: Senator Karnette.
12 SENATOR KARNETTE: Aye.
13 MS. WEBB: Karnette Aye. Senator Knight.
14 SENATOR KNIGHT: Aye.
15 MS. WEBB: Knight Aye. Senator Romero.
16 SENATOR ROMERO: Aye.
17 MS. WEBB: Romero Aye. Senator Johnson.
18 SENATOR JOHNSON: Aye.
19 MS. WEBB: Johnson Aye. Senator Burton.
20 CHAIRMAN BURTON: Aye.
21 Congratulations, Mr. Brass.
22 MR. BRASS: Thank you very much.
23 CHAIRMAN BURTON: And the record will note there's
24 a letter from Peter Dugrolovich, attorney at law, Contra
25 Costa County in support.

1 Next would be James Cuneo.

2 MR. CUNEO: Thank you Senator. Frank's a hard act

3 to follow.

4 I was appointed by the Governor about three months

5 ago and took my position on the Workers' Compensation

6 Appeals Board at that time. I appreciate his appointment,

7 and I appreciate your time with me.

8 I've done Workers' Compensation law for over 30

9 years. I'm a certified expert by the State of California

10 Bar. So I hope I brought some technical expertise to the

11 board, but more importantly, I hope I approached each one of

12 these appeals with an open heart and an open mind to

13 consider the injured workers we have before us.

14 Thank you, Senator.

15 CHAIRMAN BURTON: Senator Johnson.

16 SENATOR JOHNSON: Can you tell me what

17 conversations, if any, you had with either the Governor or

18 anyone in the Governor's office with respect to the

19 standards that are expected in terms of conflict of interest

20 and so on? Did you have such conversations, and if so,

21 when, and were they three months ago when you were appointed

22 or within the last week or two?

23 MR. CUNEO: They were three months ago and within

24 the last week. Last week they called to remind me of the

25 standards and the necessity to have my statement on file.

1 CHAIRMAN BURTON: Last week, Senator.
2 SENATOR KNIGHT: The word gets around.
3 SENATOR JOHNSON: In the course of those
4 conversations, did they make clear their desire to have
5 appointees adhere to the highest standards, and not merely
6 the technical requirements of the law and fill out whatever
7 forms are required?
8 MR. CUNEO: That was made very clear, Senator.
9 SENATOR JOHNSON: Again, was this in a more recent
10 conversation, or was this three months ago?
11 MR. CUNEO: It's the more recent conversation.
12 SENATOR JOHNSON: Thank you very much.
13 No more questions.
14 CHAIRMAN BURTON: Senator Romero.
15 SENATOR ROMERO: No questions.
16 CHAIRMAN BURTON: Senator Knight.
17 SENATOR KNIGHT: No questions.
18 CHAIRMAN BURTON: Senator Karnette.
19 SENATOR KARNETTE: No questions.
20 CHAIRMAN BURTON: And they don't think that you
21 have an effect on the administration.
22 (Laughter.)
23 CHAIRMAN BURTON: Witnesses in support.
24 Brother Kennedy, are you here just to observe
25 or -- okay.

1 MR. CUNEO: He's an ex-partner of mine.

2 MR. MARCUS: Marc Marcus, California Advocate
3 Attorneys Association. We're pleased to support Jim. I've
4 been practicing Workers' Compensation law since 1976, and in
5 1979, I came to Sacramento and I have been practicing in
6 this town since then, which is where Jim has practiced
7 defense. And so I've known Jim since 1979, and I want to
8 thank the Governor and this Committee for getting him out of
9 my hair. I've been able to settle some cases that I don't
10 think I would have settled as well had he not been gone.

11 Actually, Jim and I have also taught a class
12 together at Sacramento State for a number of years, I forget
13 how many. So I've known Jim in that capacity and in his
14 capacity as a Workers Compensation lawyer, and I can assure
15 this Committee that he will adhere to the highest standards,
16 that he is knowledgeable and principled, and I think he'll
17 be a credit to the board and to the injured workers of this
18 state.

19 MR. KIM: Panel Members, Doug Kim of the Consumer
20 Attorneys of California, and we also are very pleased to
21 support the confirmation of Mr. Cuneo.

22 CHAIRMAN BURTON: So basically, we've got two
23 people from the defense side appointed to this board today.

24 Any witnesses in opposition?

25 Any family?

1 MR. CUNEO: Yes, I do, Senator. My wife of 34
2 years, Janna. Janna is a Senior Development Officer for
3 Sutter Hospital Foundation. And my son is not here, he's in
4 law school, the second year, so he doesn't have a life right
5 now. We'll see him in a couple years. And my daughter
6 Janine, who we're very proud of. She graduated two years
7 ago and went into AmeriCorps and spent a year in a women's
8 abuse center in Portland, then a year in Phoenix helping
9 around a soup kitchen and a homeless shelter. And she
10 presently is the, I want to get this right, the Bilingual
11 Outreach Loan Coordinator for Mercy Outreach. She goes out
12 in the Spanish community and gets money and loans to people
13 of that community so they can buy their first home. So
14 we're proud of her.
15 CHAIRMAN BURTON: Well, very good. Welcome. You
16 might want to pay attention and read the bill on predatory
17 lending.
18 (Laughter.)
19 CHAIRMAN BURTON: So you don't get in trouble.
20 All right. Move by Senator Johnson?
21 SENATOR JOHNSON: Yes.
22 CHAIRMAN BURTON: Call the role.
23 MS. WEBB: Senator Karnette.
24 SENATOR KARNETTE: Aye.
25 MS. WEBB: Karnette Aye. Senator Knight.

SENATOR KNIGHT: Aye.

MS. WEBB: Knight Aye. Senator Romero.

SENATOR ROMERO: Aye.

MS. WEBB: Romero Aye. Senator Johnson.

SENATOR JOHNSON: Aye.

MS. WEBB: Johnson Aye. Senator Burton.

CHAIRMAN BURTON: Aye.

Congratulations.

(Thereupon the proceedings of the Senate Rules Committee were concluded at 2:00 p.m. on September 10, 2001.)

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CONSIDERATION OF THE REPORT OF CONTEMPT BY ENRON CORPORATION SUBMITTED BY SENATE SELECT COMMITTEE TO INVESTIGATE PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA

THURSDAY, SEPTEMBER 13, 2001
9:11 A.M.

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STATE OF CALIFORNIA

HEARING

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ROOM 3191

SACRAMENTO, CALIFORNIA

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9:11 A.M.

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Evelyn J. Mizak
Shorthand Reporter

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TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

SENATOR JOSEPH DUNN, Chair
Senate Select Committee to Investigate Price Manipulation of the California Wholesale Energy Market

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BION GREGORY
Legislative Counsel

HEDY GOVENAR, Legislative Advocate
Enron Corporation

INDEX

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Consideration and report of contempt by the Enron Corporation submitted by the Senate Select Committee, Senator Dunn.

SENATOR DUNN: Thank you, Mr. Chair and fellow Members.

I have a brief statement to read, then certainly welcome any follow-up questions to it as well.

Let me start with just a little bit of background. Since the summer of 1998, California has been embroiled in an energy crisis involving incredible price increases in the electricity market.

CHAIRMAN BURTON: We know all of that stuff. I think we're all up to date except for when we walked in the room this morning.

Go ahead.

SENATOR DUNN: Thank you, Mr. Chair. I'll cut right to the proverbial chase.

We are in a position now, approximately five to six months after a first series of voluntary document requests were made to Enron, and several months post, the service of a legislative subpoena on Enron, and to this day we have not had access to any documents from Enron.

I'll make one exception to that. They have, as we understand, established a local depository with approximately 30,000 documents in it. We have tried over the past two weeks to get into it, but due to various circumstances, including the

1 tragedy in New York, that has not occurred as of yet. So, we
2 cannot determine what is there.
3 Simply put, as referenced in the actual report to
4 the Floor from our Senate Select Committee, we go through all
5 the facts. We talk about all of what led us to today. Let me
6 just get right to the recommendation, if I may.
7 The Select Committee recommends that the Senate
8 order and adjudge, or otherwise find Enron in contempt for its
9 failure to comply with the legislative subpoena served on it on
10 June 14th of this year.
11 The Select Committee further recommends that the
12 Senate consider the imposition of coercive sanctions as
13 necessary and appropriate to compel Enron to comply with the
14 subpoena.
15 The Select Committee has previously suggested by
16 way of example a course of sanctions which would fine Enron
17 $1,000 on the first day following the Senate order, with
18 progressive fines for each subsequent day an amount double that
19 of the preceding.
20 I've recently received communication from
21 Professors Thomas Maine and Clark Kelso, the Capital Center for
22 Government Law and Policy over at McGeorge, and based on the
23 recommendation of their report, I recommend that we amend that
24 original recommendation now to reflect a coercive sanction in
25 the amount of $1,000 for the first day of noncompliance, with
26 the fine doubling each subsequent day for the first ten days
27 noncompliance, and the fine increasing thereafter at the rate of
28 one million dollars per day for each subsequent day of

1 noncompliance after 10th day.

2 I'd like to make a further recommendation, if I
3 may, that the sanctions be subject to suspension at such time as
4 the Chair of the Select Committee is provided a declaration
5 under penalty of perjury by the Chief Executive Officer of Enron
6 stating that Enron has achieved full compliance of the subpoena
7 by producing all documents that are not privileged and producing
8 the privileged logs specifically identifying each document for
9 which Enron claims a privilege, along with the description of
10 the nature of the privilege claimed for such document.

11 The declaration must further state that Enron
12 will comply with any protective order in effect as to the
13 privileged documents.

14 It should further state that Enron will comply
15 with the rulings of the Select Committee should no protective
16 order be in effect.

17 It is further recommended that should the
18 declaration be demonstrated to be incomplete or inaccurate, the
19 coercive sanctions be reinstated as of their suspension date and
20 continued until Enron has demonstrated it is in full compliance
21 with the subpoenas and any existing court order with respect
22 thereto.

23 Let me summarize to today what the current debate
24 is, very briefly, Mr. Chair and fellow Members. As you know,
25 there was legal action initiated by Enron several months ago,
26 and there were recent court rulings. One of the rulings is, I
27 don't think, important for our hearing this morning, and that is
28 the Motion to Quash, which the Court ruled in our favor.

With respect to the protective order, the Court ruled that in fact Enron was entitled to a protective order.

Our recommendation as to the contempt relates to the nonprivileged documents that would not be subject to any protective order as addressed the by the Court.

SENATOR JOHNSON: On that issue, what conversations have been held? What meetings have been held since the Judge's ruling that the Senate was entitled to the information but that Enron was entitled to a protective order? What conversations have been held, and who have been the participants? When were they held to implement the Judge's finding that they were in fact entitled to a protective order?

In other words, has there been an effort to reach a meeting of the minds on the nature of that protective order?

SENATOR DUNN: I'll be happy to respond to that question. And certainly, after my comments, Senator Johnson, I welcome both Special Counsel, Larry Drivon to the Select Committee, as well as our outside counsel and Legislative Counsel who are here to offer. The reason I do that is because everybody's been involved.

Thank you, Mr. Chair.

There have been numerous conversations and correspondence going between the Committee, the Committee's Council, Legislative Council, outside council and Enron's representative, Mr. Michael Kirby, whom I believe is here today as well.

Basically what it boils down to, Senator Johnson, at least from my perspective, is the position, until a

1 conversation with corporate Enron executives this morning with
2 myself and Mr. Drivon, that Enron was maintaining the position
3 they would not produce any documents until that protective
4 order --
5 CHAIRMAN BURTON: What happened with the
6 conversation you had this morning?
7 SENATOR DUNN: They will not produce any
8 confidential -- now, I want underscore the word confidential
9 because I'll come back to it in a minute, underscore, Mr. Chair
10 and fellow Members -- any confidential documents until a
11 protective order is hammered out.
12 Remember what I said. Our contempt
13 recommendation relates to nonprivileged documents. It doesn't
14 relate to anything that's covered by the Court ruling.
15 CHAIRMAN BURTON: It almost seems like we're in a
16 chicken and egg situation, I guess.
17 How is it going to be determined what is the
18 non-whatever, the sanctionable, nonconfidential, non-trade
19 secret stuff?
20 SENATOR DUNN: I'm happy to answer that,
21 Mr. Chair.
22 The procedure is set out very clearly in the
23 Code. If in fact Enron believes that they have documents that
24 are subject to a privilege, they are entitled to withhold those
25 documents and submit a log identifying those documents for which
26 we can then determine whether in fact the claim of privilege is
27 correct.
28 As to any other nonprivileged documents, which is

1 really the subject of our contempt, we've never gotten those
2 documents.
3 CHAIRMAN BURTON: So, you're asking for
4 everything in the world. They have an opportunity to say, you
5 can have everything in the world, but you can't have this stuff
6 over here.
7 SENATOR DUNN: That's correct. That stuff over
8 there is what was subject to the court order, correct.
9 Can I make one distinction though, Mr. Chair,
10 because it's important.
11 The difference is between what they claim to be
12 confidential and what they claim to be subject to legitimate
13 legally recognized privilege. The issue here is, the Court said
14 and addressed their focus to anything they claim there's a
15 legally recognized privilege.
16 Whatever they claim to be confidential, a
17 different and much broader word that does not have any legally
18 recognized description, is what they're claiming they won't
19 produce until that protective order is --
20 CHAIRMAN BURTON: I'll tell you how I would like
21 to do this. We're kind of familiar, I think the Members of the
22 Committee are, with the Committee's position.
23 We're not familiar with Enron's position. I
24 would kind of like them to come up and tell us why not. Then
25 you can come back, Senator.
26 Senator Johnson.
27 SENATOR JOHNSON: If I could just ask, thank you,
28 Mr. Chairman, apparently our Leg. Counsel wrote to

representatives of Enron on the 7th of September saying, "We decline your in invitation to meet and confer regarding a protective order."

Although your letter referenced Reliant, so that leads to two questions. One, it appears to me that we've been stonewalling an opportunity to sit down and discuss a protective order, not withstanding that a judge in the Superior Court said they were entitled to such a protective order.

The second question that this raises in my mind is, are we treating Reliant somehow differently than we're proposing to treat Enron?

The Judge has said they're entitled to a protective order, and my understanding is, they've said, "Let's sit down and hammer out the specifics of that."

It's my further understanding that Enron has indicated that they're willing to accept a protective order under the same conditions as have been granted to Reliant, with the additional caveat that since the Judge has now taken charge of this issue, that it be under his approval as well.

If that's incorrect, where?

SENATOR DUNN: It is incorrect, Senator Johnson, and let me address the several points that you raised.

But I want to underscore that still, even though we're going to talk about the protective order issue, that has nothing to do with the nonprivileged documents that they've never been willing to produce. I keep underscoring that.

But let's get to the protective order. Certainly, Leg. Counsel is here, the author of the letter.

1 It is not that we are stonewalling them. I
2 respectfully disagree with your representation there, Senator
3 Johnson. What we have said to them is, until such time, as the
4 Code requires, you come forward and establish legitimate trade
5 secret documents, then and only then are you entitled to that
6 protective order as indicated by the Court.
7 At no time has Enron come forward to say, "Joe,
8 these boxes over here are our trade secret documents and here is
9 why." And they're not required to show them to us, but here's
10 why.
11 If they do that, and in fact establish they are
12 legitimate trade secrets as recognized under the law, then they
13 are entitled to the protective order. That we agree.
14 SENATOR JOHNSON: What degree of supervision over
15 that issue has been assumed by the Judge in that case?
16 SENATOR DUNN: What the Court said was --
17 SENATOR JOHNSON: He said that they're entitled
18 to a protective order.
19 SENATOR DUNN: Yes.
20 SENATOR JOHNSON: Doesn't he retain some ability
21 to define the parameters of that protective order?
22 SENATOR DUNN: The issue to that -- I'm certain
23 in the Court's mind, yes. But what we're saying, Senator
24 Johnson, is, and this is not inconsistent with the Court at all,
25 but very consistent with the Court.
26 We are ready to discuss those terms of protection
27 if, as the Code requires, you come forward and establish
28 legitimate trade secret status for a certain subset of

1 documents.

2 CHAIRMAN BURTON: So, what we're asking is, they

3 give us all of this stuff and that's okay. They've got all of

4 this stuff, and that goes into a locked box.

5 And then who makes the determination if there's a

6 dispute, the Judge, an arbitrator, or what?

7 SENATOR DUNN: As the agreement with the other

8 market participants is, if there's a dispute over that trade

9 secret status, they can go to court.

10 CHAIRMAN BURTON: Nothing happens until a court

11 renders its decision?

12 SENATOR DUNN: Correct, and exactly why I keep --

13 CHAIRMAN BURTON: What's the difference between

14 this deal and any of the other generators?

15 SENATOR DUNN: The answer is, as indicated here,

16 it's none.

17 CHAIRMAN BURTON: I'd like to hear from Enron and

18 see why they should be treated different. I know why they

19 should be treated different, but why they should be treated

20 better.

21 Please identify yourselves.

22 MR. KIRBY: Good morning, Mr. Chairman. Michael

23 Kirby, appearing as counsel on behalf of Enron.

24 MR. GIBBS: I'm Robin Gibbs on behalf of Enron,

25 outside counsel as well.

26 CHAIRMAN BURTON: You're house counsel, outside

27 counsel or what?

28 MR. KIRBY: Outside counsel.

1 Your Honor, I'll address the questions.
2 CHAIRMAN BURTON: Good.
3 MR. KIRBY: Because there's a serious
4 misconception being created here.
5 When this process started, subpoenas were served,
6 and there was 112 categories of documents in each subpoena,
7 which called for literally millions of documents.
8 At a meeting in this Capitol on June 19th that I
9 attended, Mr. Drivon, as Special Counsel for the Committee,
10 said, the Committee doesn't want all of these documents. For
11 example, the very first -- I'll just give an example,
12 Mr. Chairman. The first category is, all of Enron's
13 transactions with Cal ISO last year.
14 We have offered repeatedly in writing to give
15 them all of those documents. It's over a million documents. And
16 they said, we don't want that. We don't need that.
17 CHAIRMAN BURTON: Why should you be treated
18 differently than the others?
19 MR. KIRBY: We're not being treated different.
20 But the Court -- the problem is, Senator, is that the Select
21 Committee refuses to do what Judge Kobayashi ordered them to do.
22 CHAIRMAN BURTON: What did he order them to do?
23 MR. KIRBY: He ordered them, your Honor, he
24 granted the motion that said Enron is entitled to a protective
25 order. And on the day of that ruling, and on every day since --
26 CHAIRMAN BURTON: So explain to me, if you can,
27 explain to me. All right, there's a protective order. You want
28 a protective order.

1 What's wrong with you saying, "Here's this stuff;
2 here's this stuff. We think it should be protected," and you
3 get a protective order on that? You want a protective order
4 before you give anything or what? I'm trying to figure out the
5 problem here.
6 MR. KIRBY: The protective order provides for
7 exact -- but if I can give the context.
8 The Senate Committee limited its request in
9 writing. And every one of these yellow tabs right here -- I'm
10 not going to go through them for you --
11 SENATOR JOHNSON: Just on that narrow point.
12 That's entirely consistent with the representations that Senator
13 Dunn made to this Committee when he obtained the subpoenas.
14 Because I raised the issue at that time, my God, are we going on
15 just a fishing expedition, asking for everything? He said no;
16 we're going to narrow in on those documents that we consider to
17 be of the highest priority.
18 To indicate that there was a meeting this summer
19 in which the staff, or the Special Counsel said, no, we're not
20 interested in all of this, is entirely consistent with what
21 Senator Dunn represented to this Committee in seeking the
22 subpoena.
23 CHAIRMAN BURTON: That was then; this is now.
24 What I'm trying to do is find out, it seems to
25 me, because I'm just a city lawyer.
26 MR. KIRBY: I'm just a country lawyer.
27 CHAIRMAN BURTON: Yeah, that's what I was afraid
28 of.

[Laughter.]

CHAIRMAN BURTON: So, you've got two boxes of stuff. This stuff's okay. This stuff is questionable, and we think there's a problem with that from the standpoint of confidentiality, trade secrets, blah-blah-blah.

So, you give that stuff to the Select Committee. This is under a locked box; this is open for everybody to see it.

At that time, as I understand it, they would then issue their protective order on stuff that is found to be protected. You know, when the bottom line gets to it, I guess by a judge.

How would you want to do it?

MR. KIRBY: Your Honor, what we have proposed in the protective order that we have submitted to them, it tracks -- a, the Court says the protective order shall be entered, and that's fine with us.

The 16 categories, which they have limited their request to, and if you look at the contempt report, it is specific to the 16 categories, which are all confidential documents.

The protective order creates a procedure --

CHAIRMAN BURTON: It is all confidential documents in your opinion. By law or in your opinion?

MR. KIRBY: We submit as was -- we are submitting an index. A protective order is entered, and it outlines the procedure.

And Senator Johnson, I have sent three letters

1 and made number of calls, and their response is, we will not
2 discuss it with you. There's nothing I can do -- I've sent four
3 letters now, I think, saying, "Sit down with us and work out the
4 protective order." And as the Senator reported, they told me on
5 the phone and they say, "At this time we decline your invitation
6 to meet and confer regarding a protective order."
7 I can't get the protective order done if they
8 will not meet with us.
9 The issue, Mr. Chairman, is, the procedure is in
10 the protective order. We identify documents that we contend --
11 we give them an index. If they dispute that, the procedure can
12 get handled. We were required to meet and confer. If it can't
13 be worked out, we go to court.
14 Just as of -- Mr. Chairman, the issue today is,
15 they have never, after June 19th, asked for all of these
16 documents. They now say they want the documents, and we have
17 told them, if you want all those documents, we'll start
18 producing them. You've told us before you don't want them. You
19 want to limit it to the 16 confidential categories.
20 The issue is, they want us to give up the court
21 protective order that Judge Kobayashi granted. That's the
22 dispute today. We are willing --
23 CHAIRMAN BURTON: Senator Dunn, can you get up
24 here so we can kind of cut to the chase on this.
25 I'm missing something. I'm really missing
26 something.
27 SENATOR DUNN: Yes.
28 CHAIRMAN BURTON: I don't want to get into who

1 shot John.

2 SENATOR DUNN: Understood.

3 CHAIRMAN BURTON: How would you do this? How

4 would do this?

5 SENATOR DUNN: Okay. This is what -- what we're

6 getting to the dispute of is what I identified before, and it's

7 the difference between privileged documents and that --

8 CHAIRMAN BURTON: But somebody else's going to

9 decide that. You ain't going to decide it, and they ain't going

10 to decide it.

11 SENATOR DUNN: No, I understand that.

12 CHAIRMAN BURTON: I want to understand what

13 procedure are you looking for to get to --

14 SENATOR DUNN: Providing them protection?

15 CHAIRMAN BURTON: I guess so, or getting us out

16 of the middle of this, whatever.

17 SENATOR DUNN: We don't want to be in the middle

18 of it at all.

19 As far as the protection is concerned, our

20 position has always been clear.

21 CHAIRMAN BURTON: It'd be helpful if you listen

22 to this, unless you know the answer.

23 SENATOR DUNN: When you make a showing that you

24 have legitimate trade secret documents, you are now entitled to

25 protection for those documents. And when that showing has been

26 made, we will then sit down with you and try to negotiate a

27 protective order.

28 But there has been no showing.

1 CHAIRMAN BURTON: For the documents that have
2 been determined either mutually or by the outside party, which I
3 guess would be a judge, to be within the scope of the protective
4 order --
5 SENATOR DUNN: Whatever the procedure may be;
6 that's correct.
7 CHAIRMAN BURTON: I assume when it's all over,
8 that'd be the procedure.
9 SENATOR DUNN: I suspect ultimately a market
10 participant like Enron would go to the court after we've
11 followed the procedure.
12 CHAIRMAN BURTON: Or, I guess --
13 SENATOR DUNN: Could I interrupt on second,
14 Mr. Chair, if I may.
15 CHAIRMAN BURTON: Sure.
16 SENATOR DUNN: The issue of the 16 priority
17 requests, let us clarify this, because this is very important.
18 The 16 priority requests were made as a compromise offer, as
19 part of a compromise offer, to all market participants. There
20 were other terms of it.
21 Enron has consistently and still is rejects the
22 terms of that compromise offer that every other market
23 participant accepted. As a result, we have no choice but to
24 zero in on the full subpoena.
25 Now, what I had said, Senator Johnson, at the
26 earlier hearing in requesting that subpoena was, those 112
27 themselves are narrowed and relevant, and I even gave to you our
28 footnoted request indicating that.

1 SENATOR JOHNSON: With the reasons, yes, I
2 recall.
3 SENATOR DUNN: Yes, that's correct, Senator
4 Johnson.
5 SENATOR JOHNSON: You indicated at that time, if
6 memory serves, that the sheer volume of materials requested was
7 such that you weren't really going to seek all of this; that you
8 were going to attempt, at a staff level, to prioritize --
9 SENATOR DUNN: Correct.
10 SENATOR JOHNSON: -- and work through those
11 documents.
12 Another question that I have is, did Enron
13 communicate to you within the last day or two a specific
14 suggested protective order, and what has been the response to
15 that?
16 SENATOR DUNN: Yes. Yesterday afternoon, I got a
17 fax from Michael Kirby with a 14-page proposed protective order.
18 At the same time, I got representation from their lobbyist here
19 that they were willing to agree to what the others agreed to.
20 When you put the protective order from Mr. Kirby,
21 compared to what the other market participants agreed to, there
22 is a vast difference, and I'll give you one example.
23 Mr. Kirby's protective order said, if there is a
24 dispute, they will produce nothing until it's fully resolved at
25 the appellate level.
26 CHAIRMAN BURTON: Nothing about the issue that is
27 in dispute, or nothing about the name of the secretary to the
28 President of the company?

1 SENATOR DUNN: Anything they claim confidential.
2 Notice the distinction.
3 MR. KIRBY: Just disputed items. You're right,
4 Mr. Chairman. Just the disputed items.
5 We have offered to produce --
6 CHAIRMAN BURTON: The thing is, they claim
7 confidential and you don't, you could end up in court, hot or
8 cold; right?
9 SENATOR DUNN: But again, Mr. Chair, the issue
10 that comes before this Committee has nothing to do with claimed
11 privileged documents. It has to do with the non --
12 CHAIRMAN BURTON: The issue before the Committee
13 that's asking us to do something, and we want to know why we're
14 doing it, Senator. That's the issue.
15 SENATOR DUNN: And Mr. Chair, the answer is
16 because Enron hasn't produced the nonprivilege documents subject
17 to the subpoena.
18 CHAIRMAN BURTON: Why not?
19 MR. KIRBY: Because the subpoena was specifically
20 limited to the 16 categories of confidential documents. And he
21 says why we're here today, look at the contempt report. It
22 specifically provides the priority documents. It's always,
23 since June 19th --
24 CHAIRMAN BURTON: So, everything that they want
25 you say is privileged?
26 MR. KIRBY: It is confidential. And the other
27 point we have, your Honor --
28 CHAIRMAN BURTON: Not all that stuff's

1 confidential.

2 MR. KIRBY: The other point we have, your Honor,

3 is there's two levels of confidentiality. One of them is the

4 documents which we are still going to produce under the

5 protective order.

6 But what you're hearing today is, according to

7 Senator Dunn, we don't get a protective order now or later until

8 they look at the documents or have a dispute.

9 CHAIRMAN BURTON: Well, they cannot --

10 MR. KIRBY: The Court said we are entitled to a

11 protective order now. And as soon as we get that order

12 entered, we can start producing confidential documents in the 16

13 categories.

14 CHAIRMAN BURTON: Two questions.

15 Are you asking for stuff that you really didn't

16 want to bust their chops because they aren't being cooperative?

17 SENATOR DUNN: No. So you know, Mr. Chair, we

18 have reduced the 112 to 85. We took out about 29-30 of the

19 requests.

20 CHAIRMAN BURTON: Why would you ask for stuff

21 that you didn't want?

22 SENATOR DUNN: When those first requests were

23 made back in March, we were in a rather steep learning curve on

24 what would be necessary --

25 CHAIRMAN BURTON: But now you think --

26 SENATOR DUNN: That's correct.

27 CHAIRMAN BURTON: Second thing is, explain to me

28 what is wrong with the procedure they set forth, just so I

1 understand it.

2 SENATOR DUNN: As far as the claim of privilege?

3 CHAIRMAN BURTON: As far as the confidentiality

4 order.

5 I think the question is, do you do it today, or

6 do you do it a week from today after something happens.

7 Tell us what's wrong with it as they proposed it.

8 SENATOR DUNN: In their proposed protective order

9 there are significant problems to it, okay? Such as, when we

10 can produce documents, not produce documents --

11 CHAIRMAN BURTON: Hold on.

12 When who could produce them?

13 SENATOR DUNN: I'm sorry, when Enron.

14 CHAIRMAN BURTON: Go for it.

15 MR. KIRBY: Mr. Chairman, that's exactly why we

16 have asked every day since Judge Kobayashi --

17 CHAIRMAN BURTON: Forget that stuff. Go for the

18 deal.

19 MR. KIRBY: We'll sit down with them right now,

20 your Honor, and finish this protective order today and get Judge

21 Kobayashi to sign it and start producing documents next week, if

22 they will simply get the protective order that Judge Kobayashi

23 ordered be entered done.

24 CHAIRMAN BURTON: Give me the second one.

25 SENATOR DUNN: Before I get to that, again, as

26 I've been stressing from the beginning, our request on contempt

27 has nothing to do with documents covered by a protective order.

28 They have to do with the nonprivileged documents that Enron to

1 this day has not produced.

2 MR. KIRBY: Let me respond to that, because they

3 have not requested these nonconfidential documents until last

4 Friday, after Judge Kobayashi ruled.

5 I would defy the Committee to show us one

6 document since June 19th that asks for anything except the 16

7 priority categories.

8 Every one of these yellow tabs is a request only

9 for the priority categories that are covered by a protective

10 order.

11 SENATOR JOHNSON: And that expansion occurred at

12 a time when the Committee and our Legislative Counsel was

13 declining to meet with Enron to discuss the terms of a

14 protective order?

15 MR. KIRBY: That is correct.

16 SENATOR DUNN: No, Senator Johnson, no. That's

17 not correct.

18 They rejected the compromise offer of the 16

19 priority requests.

20 SENATOR JOHNSON: Wait, Senator Dunn. I just

21 read from a letter from Leg. Counsel that was dated September

22 7th, "At this time we decline your invitation to meet and confer

23 regarding a protective order."

24 Now, is it true that the staff of the Select

25 Committee and Leg. Counsel have, since the Judge's order,

26 essentially declined to comply, essentially declined to enter

27 into a meet and confer process on the designing of a protective

28 order?

1 SENATOR DUNN: No. We have simply insisted that
2 they first show the trade secrets --
3 SENATOR JOHNSON: What meetings have been held?
4 SENATOR DUNN: There haven't been any direct
5 meetings because they have refused to show, make a showing of
6 trade secret status.
7 SENATOR JOHNSON: To me, that's stonewalling.
8 That's refusing to --
9 SENATOR DUNN: It's what the Code requires,
10 Senator Johnson.
11 SENATOR JOHNSON: -- to meet with them.
12 And if, contemporaneously, the list of 16
13 categories of documents was then expanded to 35, that really
14 calls into question the fairness of the process that the Select
15 Committee is going under.
16 SENATOR DUNN: Senator Johnson, it was --
17 SENATOR JOHNSON: I don't have any particular
18 case to make or ax to grind for Enron. They may be the worst
19 people in the world, but they're entitled to a fair process.
20 SENATOR DUNN: Agreed.
21 SENATOR JOHNSON: I'm really questioning the
22 timing of that, the expansion of the categories and so on.
23 Why not simply sit down, meet and confer, and
24 come up with a protective order?
25 SENATOR DUNN: Senator Johnson, one, we never
26 expanded it. They rejected the compromise offer of the 16
27 priority requests first. They rejected that.
28 Now, if I may finish --

1 SENATOR JOHNSON: While seeking a protective
2 order.
3 SENATOR DUNN: No, they never said we're willing
4 to do that as part of the package the other market participants
5 have accepted.
6 And more importantly, what -- the issue of the
7 protective order, I can't stress this enough, the protective
8 order, whether hammered out at this table or in a court several
9 weeks down the line, only covers a subset of privileged
10 documents.
11 Enron in this contempt has only to do with those
12 documents that Enron has not produced that are not part of a
13 claim of privilege, underscore the word privilege, versus
14 confidentiality.
15 CHAIRMAN BURTON: You never did answer why you
16 should be treated different than the other generators.
17 MR. KIRBY: Mr. Chairman we're not asking to be
18 treated different.
19 CHAIRMAN BURTON: Yes, you are. They agreed to a
20 process that you're resisting.
21 MR. KIRBY: We, your Honor, went to court for a
22 protective order because the alternatives submitted by the
23 Select Committee was, you either give us all of your
24 confidential trade secret documents or we'll find you in
25 contempt and fine you billions of dollars.
26 If you look at the report from Senator Dunn, he
27 said, he told us, if you have to go to court to protect your
28 legal rights, that's your right.

1 And he's also on record in the Reliant contempt
2 hearing as saying, you cannot hold anyone in contempt for
3 asserting their valid legal rights.
4 Judge Kobayashi has said --
5 CHAIRMAN BURTON: Let's get back to my question.
6 Would you agree today to the same protective
7 order procedure as the other generators; yes or no? It's
8 simple.
9 MR. KIRBY: Your Honor, yes, we submitted a
10 protective order yesterday that --
11 CHAIRMAN BURTON: No, no, no, no. That is not
12 the question. That's not the question that I asked. You don't
13 have to say yes, you don't have to say no.
14 Would you agree to the same protective orders
15 that -- how many generators have signed it?
16 MR. DRIVON: Seven.
17 CHAIRMAN BURTON: -- that the other seven did, or
18 not?
19 MR. KIRBY: There's a difference. You say, your
20 Honor, the protective order. It is not a protective order.
21 CHAIRMAN BURTON: As much as I enjoy it, I ain't
22 a judge. I do not have the Latin for judge, and I'm going to be
23 a coal miner instead.
24 MR. KIRBY: Senator Burton, no other generator
25 has a protective order. They have an informal agreement which
26 has no enforcement, and that's what Judge Kobayashi ruled, is
27 that there is no remedy if someone's trade secrets are leaked to
28 the press. We are entitled to a protective order.

1 CHAIRMAN BURTON: So, they're all stupid for
2 having entered into those agreements, or they've got nothing to
3 hide?
4 I'm missing something. I'm missing what sets
5 you --
6 MR. KIRBY: I'm only here to represent Enron. I
7 can't comment on what guided somebody else.
8 All I know is what Judge Kobayashi said, is that
9 Enron is entitled to a protective order.
10 What we have done --
11 CHAIRMAN BURTON: And they're saying they'll give
12 you a protective order.
13 MR. KIRBY: Well then, your Honor, let's sit down
14 and finish it.
15 SENATOR JOHNSON: This is about a contempt.
16 It seems to me that Senator Dunn is telling us,
17 yeah, he's willing to do it. You're telling us you're willing
18 to do it.
19 I don't know what we're here considering a
20 contempt and penalties, and so on. Why don't you, before the
21 sun sets today, hammer out a protective order?
22 SENATOR DUNN: Because, Senator Johnson, this
23 contempt has nothing to do with privileged documents subject to
24 a protective order.
25 It has everything to do with six months have gone
26 by, and Enron has not produced its nonprivileged documents
27 subject to the subpoena. That's what we're here about.
28 CHAIRMAN BURTON: What have you not -- have you

1 produced anything?

2 MR. KIRBY: Mr. Chairman, there are 33,894

3 documents in a depository in Sacramento, and now I think the

4 number's up to 49,000, that until -- until Judge Kobayashi

5 ruled, this Committee never even asked to look at them. They

6 never asked to look at them.

7 CHAIRMAN BURTON: Hold on for a minute.

8 Dennis, and identify yourself.

9 MR. MURPHY: I'm Dennis Murphy. I'm Special

10 Counsel hired by Leg. Counsel.

11 The Committee was never advised. They were

12 advised that there was a place rented, and they intended to put

13 documents in there. They were never advised there were

14 documents in there, and they were never advised where this

15 repository was until the lawsuit had occurred, and we received

16 that information in a declaration filed in conjunction with the

17 lawsuit.

18 And a compliance with the subpoena doesn't mean

19 we have to go search out somewhere in Sacramento and find

20 documents.

21 We still have been trying for a week to get into

22 that depository and have been unable to, to verify what is the

23 nature of the documents in there. They have not allowed our

24 people in there to verify what documents are in there, as of

25 this point.

26 And as to Senator Dunn's other point, I'd like to

27 read a letter dated today from Enron. We're talking about the

28 nonprivileged documents. The first sentence says, "Enron is

1 willing to produce the out-of-state nonconfidential, non-trade
2 secret documents called for by the Senate Select Committee
3 subpoena. In return," not we will just produce it, "In return,
4 you have to agree to the protective order Mr. Kirby has
5 submitted to the Court."
6 And the protective order Mr. Kirby has submitted
7 to the Court, under the proper process, would be, he submits it
8 to us. We submit to him our objections. He submits back his
9 response to our objections. We come to an agreement and submit
10 it to the Court.
11 We received this yesterday.
12 CHAIRMAN BURTON: That's a point. In other
13 words, you'll give them the documents if they agree to stop the
14 contempt hearing, and then agree to the entry of something you
15 wrote for the benefit of your client. That doesn't really make
16 a hell of a lot of sense.
17 Would you agree to the one that they write in?
18 Probably not.
19 MR. KIRBY: Mr. Chairman, I don't think there's
20 been any serious dispute --
21 CHAIRMAN BURTON: Have you got a comment here?
22 MS. GOVENAR: I do.
23 CHAIRMAN BURTON: Identify yourself.
24 Hedy Govenar, representing Enron.
25 Another lobbyist and I had a conversation with
26 Senator Dunn, who was very generous with his time yesterday. He
27 suggested the way that that letter wrote read, the protective
28 order that we discussed was the Reliant protective order, along

1 with the line that basically put Judge Kobayashi in the mix of
2 that, as his order was.
3 That's why that letter was written that way,
4 because we were trying to be responsive to Senator Dunn's
5 points, and that's the result of that.
6 CHAIRMAN BURTON: I would say one thing. If it
7 was a protective order that they gave to Reliant, probably would
8 have been better to say the same protective order.
9 You shook your head about something. What?
10 MR. DRIVON: Senator, I'm Larry Drivon, Special
11 Counsel to the Committee.
12 The agreement with the other generators, and as
13 most specifically set forth in the Reliant thing, there is a
14 complete procedure --
15 CHAIRMAN BURTON: Is that a legal term?
16 MR. DRIVON: Yeah. It's in the same book as this
17 stuff and that stuff.
18 CHAIRMAN BURTON: Right. I'm not a lawyer.
19 MR. DRIVON: I've been accused of same problem.
20 There is a procedure there that tracks the
21 California law and reserves to the market participant the right
22 to go to Superior Court in case there is a dispute that cannot
23 be resolved. That's what it does.
24 And we have offered exactly the same --
25 CHAIRMAN BURTON: What does theirs do?
26 MR. DRIVON: What theirs does, Judge, is --
27 [Laughter]
28 SENATOR JOHNSON: And I thought he didn't get

1 along with the Governor.

2 CHAIRMAN BURTON: If I could make my eyebrows go

3 up and down, I'd really feel good.

4 MR. DRIVON: That was an expression to Judge

5 Johnson.

6 CHAIRMAN BURTON: What did you know and when did

7 you know it?

8 [Laughter.]

9 MR. DRIVON: Their proposed protective order has

10 been completely looked at by Mr. Murphy.

11 CHAIRMAN BURTON: That explains the difference

12 between the two. Now tell me the difference between the two.

13 SENATOR JOHNSON: Wait. Just on that narrow

14 point. I've asked half a dozen times, why hasn't there been an

15 effort to meet and confer, instead of exchanges of letters and

16 changes of documents? And you have one interpretation; they

17 have another interpretation.

18 Why in the world haven't you sat down, the

19 relevant parties, around a table and hammered out an agreement?

20 You should be involved in a meet and confer process. And they

21 are entitled, so the Judge said, to a protective order. Why

22 hasn't that happened?

23 SENATOR DUNN: Senator Johnson, first, we have

24 been meeting for almost six months, including Enron, in trying

25 to do this.

26 With respect to now, Senator Johnson, our

27 position simply tracks the Code. Once you make a showing of

28 trade secret status, then you're entitled to the protective

1 order.

2 They have not followed the Code and come forward

3 to try to make any showing on trade secret status.

4 SENATOR JOHNSON: Again, I don't have a

5 particular bias in favor or against Enron, but I do think that

6 fairness is important. And it smacks at this point of their

7 being punished for having exercised their rights to go to court

8 and to have achieved in court at least a partial victory in the

9 sense that the Judge said they were entitled to a protective

10 order.

11 And if, as has been indicated, the number of

12 categories expanded from 16 to 35 suddenly, when all summer you

13 weren't asking for the 35 categories, that smacks to me of, you

14 know, a little payback for them having had the temerity to go to

15 court.

16 And I have to wonder as well what will be the

17 reaction of Judge Kobayashi to this. The last thing we want to

18 see is some brouhaha --

19 SENATOR DUNN: No one wants that.

20 SENATOR JOHNSON: Between the judicial branch and

21 the legislative branch.

22 SENATOR DUNN: Senator Johnson, you're absolutely

23 right on that last point.

24 But it's exactly why I continually stress here,

25 this dispute over the protective order is not at issue before

26 this Committee.

27 What's at issue before this Committee is the fact

28 that since April, Enron has not produced its nonprivileged

1 documents.

2 CHAIRMAN BURTON: Okay, why not? When you get

3 down to it, they are asking that you be held in contempt for not

4 giving us the documents that tell who the Chief Executive

5 Secretary is, all right? Stuff that isn't privileged.

6 Why haven't you given anything?

7 MR. KIRBY: Because, Mr. Chairman, they

8 specifically said, starting on June 19th, that Friday, that they

9 don't want anything but the 16 priority categories.

10 CHAIRMAN BURTON: What about that?

11 SENATOR DUNN: The priority request that we gave

12 to the other market participants were part of a compromise

13 package, Senator Burton.

14 CHAIRMAN BURTON: They said that you said --

15 SENATOR DUNN: That's true. The offer was made

16 at that time to every market participant. If you do these three

17 things, including the 16 requests, that we will not move forward

18 with contempt.

19 CHAIRMAN BURTON: Okay, fine.

20 SENATOR DUNN: They rejected that.

21 CHAIRMAN BURTON: So then, when did you ask them

22 for the other stuff?

23 SENATOR DUNN: You mean the full subpoena?

24 CHAIRMAN BURTON: Whatever it is that we're

25 holding them in contempt for not giving.

26 SENATOR DUNN: When they rejected, they have

27 always --

28 CHAIRMAN BURTON: Joe, I need a date. I wasn't

1 there.

2 SENATOR DUNN: The first time --

3 MR. GREGORY: June 14th the subpoena was served.

4 SENATOR DUNN: That's correct.

5 MR. GREGORY: Bion Gregory.

6 On June 11th, you authorized the issuance of the

7 subpoena. It was served on June 14th, 112 categories of

8 documents. That has since been reduced to 85 based on

9 objections made by Enron at a meeting before the Select

10 Committee. That's one path. That's the issue before the

11 Committee today.

12 Now, as happens in a lot of the matters and so

13 forth, what the Select Committee said is, in lieu of complying

14 with the subpoena, if you would give us a priority list of

15 documents and sign a confidentiality agreement, and a depository

16 agreement, and with the latest Reliant thing there's a side

17 agreement on that, you don't need to comply with the subpoena.

18 We'll deem that you've complied if you have provided us with the

19 16 categories and signed this procedure, and stuff like that.

20 The other generators have done that. Enron to

21 date has refused to do that, and so forth, so we're back under

22 the subpoena again.

23 SENATOR JOHNSON: As a Member of this Committee,

24 and one who voted for the subpoenas, the representation at the

25 time Senator Dunn and counsel to the Select Committee was --

26 because I raised the objection, are we casting just this wide

27 net, you know, going on a fishing expedition? And Senator

28 Dunn's response was, and Counsel's response was, that no. We

1 did not anticipate in any sense that we were going after all of
2 the documents contained in the subpoena, but that at that point,
3 they weren't quite sure what they wanted, but he was sure that
4 that would be dramatically reduced.
5 Now, what we're hearing is that all summer long,
6 it's provide us with 16 categories of documents. And Enron's
7 position was that those categories were confidential.
8 And again, Senator Dunn, with all respect, I come
9 back to, it seems that this has changed since Judge Kobayashi's
10 order. And I can't help again but wonder if that's punitive; if
11 we are suddenly deciding, all right, we are going to, by God,
12 slap these people down because they had the temerity to get a
13 judge to agree with them that they were entitled to protective
14 order.
15 And even, Joe, even if the argument that you've
16 been constructing, that this is separate and apart from that, I
17 still can't understand why there has been a reluctance since the
18 Judge ruled to have a meet and confer process to talk about that
19 protective order.
20 CHAIRMAN BURTON: While they're thinking, again,
21 why haven't you given them anything?
22 MR. KIRBY: Mr. Chairman, we started putting the
23 nonconfidential documents in that depository, and on June
24 19th --
25 CHAIRMAN BURTON: Did you tell them where it was
26 and say "here's the key"?
27 MR. KIRBY: We told them where it was. We gave
28 them the address of it in Sacramento. It was discussed on

1 July 11th, 2001, when we had the original contempt hearing.
2 They have never asked for it, and the reason,
3 Senator, is --
4 CHAIRMAN BURTON: Counsel disagrees.
5 MR. MURPHY: I major disagree, your Honor.
6 MR. KIRBY: I appreciate that. When I finish my
7 position, he can --
8 CHAIRMAN BURTON: Wait. You don't have to
9 finish. He's disagreeing with the point you made. I think it
10 was time, place, and date.
11 I'd like to do that, and then I'd like to tell
12 you what else that I want to do. And I'll tell you what my
13 predilection is if this thing isn't resolved. If I've got to
14 err on the side of something, I am not erring on the side of
15 Enron.
16 MR. MURPHY: Your Honor, Chairperson Burton, the
17 transcript; the transcript.
18 CHAIRMAN BURTON: There still is a vacancy on the
19 Supreme Court.
20 MR. MURPHY: The transcript says, by Mr. Kirby,
21 "We have some 30,000 documents to be produced and we have
22 rented a repository in Sacramento."
23 That is the information we had until the lawsuit
24 was filed and the declaration was given. Never, not once, were
25 we told it was at 400 Capitol Mall, Suite 900. We were never
26 told that they had been produced or where they were until the
27 lawsuit --
28 CHAIRMAN BURTON: What was the date of that,

1 Dennis?

2 MR. MURPHY: I think this is the transcript.

3 It's July 11th, I believe.

4 MR. KIRBY: Which is the day the lawsuit was

5 filed.

6 MR. MURPHY: It was the July 11th hearing before

7 the Select Committee.

8 Now, let's just make this as black and white --

9 CHAIRMAN BURTON: Let me stick with my stuff.

10 It's much more interesting.

11 SENATOR DUNN: And whenever, if I may, Mr. Chair.

12 I want to add one additional thing that I was going to say to

13 Senator Johnson.

14 This dispute could certainly go on, but in the

15 recommendation that I read earlier, there's a savings clause,

16 Senator Johnson. It says that if in the next two weeks Enron

17 starts producing the nonprivileged documents, and provides the

18 privilege log, and a declaration stating they have done so, the

19 sanctions abate. And if in fact that's true --

20 CHAIRMAN BURTON: I haven't gotten to this point

21 yet, but how about if they don't produce them in the next two

22 weeks, the sanctions kick in?

23 SENATOR DUNN: That's what the recommendation is.

24 CHAIRMAN BURTON: No, abating means that they

25 started and are stopping. Kicking in means they've got a

26 two-week period to do it before they get one, two, four, eight,

27 sixteen, thirty-two, sixty-four, hike.

28 SENATOR DUNN: And the reason that I would say to

1 start them now and abate them, Mr. Chair, is we have six months
2 that have gone by --
3 CHAIRMAN BURTON: Two weeks ain't going to kill
4 us. I mean, what we want is the information.
5 SENATOR DUNN: Yes, that's correct.
6 CHAIRMAN BURTON: I would like, with or without
7 your high priced lobbyists, with our counsel, with the Senator,
8 and I would like Senator Morrow to be there as well, we can make
9 a committee room available and privacy, even this one, and see
10 what you can do.
11 And we can come back, because basically under
12 this procedure, we can do something this afternoon and vote on
13 it this afternoon. We can do something this afternoon and vote
14 on it tomorrow. We can do something tomorrow and vote on it
15 tomorrow.
16 We don't necessarily want to get into this, but I
17 just say to you, sir. My inclination, absent something, would
18 be to vote for the contempt. And I would, as opposed to doing,
19 you know, start the clock now and abating in two weeks, I would
20 probably start it in two weeks, but maybe a little bit heavier.
21 It's lost on me why all these other groups did
22 something and you didn't. And I don't think their lawyers were
23 dumber than you. I don't know if they had less to hide that
24 were trade secrets. I don't know if they were afraid of
25 something and you're not.
26 But basically, that would be my suggestion to the
27 Committee. And to have Dennis and Bion there, our lawyers, and
28 then come back. Because I think I understand this as well as

1 I'm going to be able to understand this.
2 That's kind of my inclination, Senator Johnson.
3 I would think I'm just kind of at a lost as to why we're here,
4 or how we got here.
5 SENATOR JOHNSON: I am as well. The thought that
6 we might reconvene at some later point today, but in the
7 meantime, that these parties will sit down and try and actually
8 go through a meet and confer process, and decide on a protective
9 order.
10 MR. KIRBY: Senators, we're willing to do that.
11 That's why I've been trying to schedule that meeting.
12 SENATOR JOHNSON: Mr. Chairman, that seems to me
13 to be the wisest course for us to follow at this point. See if
14 they can come up with a protective order that they can agree
15 on.
16 MR. MURPHY: Chairman Burton, could we have them
17 agree on the record that they will produce the non-trade secret
18 documents whether we agree or don't agree on their protective
19 order?
20 CHAIRMAN BURTON: Well, no. Here's the deal,
21 Dennis, is that they will agree or not agree, whatever comes
22 out. And if a majority of the Committee is not happy with what
23 they did, they will be found in contempt, and there will be
24 sanctions.
25 So, they don't have to agree or not to agree to
26 something right now. It's all going to be in a package. And if
27 they don't go for it, and we think that they are being
28 contemptible of the process and the powers of the Senate, we

1 will hold them in contempt or not, depending on what a majority
2 of the Members of the Committee and the Senate want to do.
3 But my feeling is, if something doesn't happen,
4 that I probably, unless somebody can prove otherwise, will vote
5 for it. But I think it's not going to start something tomorrow
6 and abate it in two weeks. You'd have two weeks to think about
7 something.
8 SENATOR JOHNSON: Can I ask one final question?
9 Is there an additional hearing scheduled before Judge Kobayashi?
10 MR. KIRBY: There is a hearing next Wednesday,
11 your Honor, which we have --
12 CHAIRMAN BURTON: You know, that just absolutely
13 derogates any authority.
14 MR. KIRBY: -- which we have offered to take off
15 calendar and withdraw if we get the protective order entered and
16 get the issues resolved here.
17 SENATOR JOHNSON: I just would hope that all the
18 parties, the staff -- I hope that cooler heads will prevail.
19 And when we reconvene, that there will be an agreement on a
20 protective order.
21 SENATOR DUNN: We've been trying for six months,
22 Senator.
23 SENATOR JOHNSON: With respect, I don't think
24 you've been trying too hard since Judge Kobayashi's order.
25 CHAIRMAN BURTON: Bion.
26 MR. GREGORY: I just want to clarify what that
27 hearing next week is. It has nothing to do with the protective
28 order. It's dealing with another motion of Enron to enjoin the

Senate of the State of California from finding them in contempt.

SENATOR JOHNSON: I understand.

MR. GREGORY: It's a totally different issue.

SENATOR JOHNSON: I understand, and the representative of Enron just said if they have a protective order, they're willing to fore go that.

Again, Mr. Chairman, or your Honor, I think you expressed it correctly. I hope that during the course of today, cooler heads are going to prevail.

And the last thing that I think we should want, as I mentioned earlier, is to precipitate some big battle with the courts in this state over these kinds of issues.

The Judge has said they're entitled to a protective order. I think we need due diligence to see that that agreement's hammered out.

SENATOR DUNN: And Senator Johnson, I don't disagree with you at all.

Also, remember that we've got a company that has documents outside of any protective order that they flatly refused for six months --

CHAIRMAN BURTON: We understand the issue, Senator. I think that you ought to try to find Senator Morrow. I think that you ought to find a room.

Have you guys got a conference room, Bion?

MR. GREGORY: Yes.

CHAIRMAN BURTON: All right, in Leg. Counsel's conference room you can convene, get on the roll.

Basically, I just say to you that you may be

bluffing with no pair.

I want this worked out, but I'm fully prepared to find Enron in contempt. I'm fully prepared to do sanctions. But I would give you a couple weeks to think about it.

SENATOR DUNN: Could we use conference room outside your office? It gives me easiest access to the Floor and the meeting.

CHAIRMAN BURTON: Sure.

All right, it will be in Room 211.

The Committee on Rules is in recess at the call of the Chair.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately. 10:05 A.M.]

--ooOoo--

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